

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

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2. AMENDMENT/MODIFICATION NO. 128	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable) QA:QA
6. ISSUED BY RW US DEPARTMENT OF ENERGY OFFICE OF CIVILIAN RADIOACTIVE WAST 1551 HILLSHIRE DRIVE LAS VEGAS NV 89134	CODE 02801	7. ADMINISTERED BY (If other than Item 6) RW US DEPARTMENT OF ENERGY OFFICE OF CIVILIAN RADIOACTIVE WAST 1551 HILLSHIRE DRIVE LAS VEGAS NV 89134	CODE 02801
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) BECHTEL SAIC COMPANY LLC ATTN DEBORAH J SCHLISMANN 1080 N TOWN CENTER DR LAS VEGAS NV 891446363		(x) 9A. AMENDMENT OF SOLICITATION NO.	
CODE 003638751 FACILITY CODE		9B. DATED (SEE ITEM 11)	
		x 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC28-01RW12101	
		10B. DATED (SEE ITEM 11) 11/14/2000	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

- ☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

See Schedule

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)
X	Bilateral Modification by Mutual Agreement of the Parties.

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 3 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Tax ID Number: 94-3363387

DUNS Number: 003638751


Subj to Retent: N

EXECUTED
COPY

The purpose of this modification is to update
Part I Section H, Part II Section I, and Part III
Section J, Appendices A, D, E, I, and J of the
contract, as follows:

1. Replace Part I, Section H - Special Contract
Continued ...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) TED C. FEIGENBAUM PRESIDENT & GENERAL MANAGER	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Spencer R. Peterson
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	16B. UNITED STATES OF AMERICA  (Signature of Contracting Officer)
15C. DATE SIGNED 9/25/08	16C. DATE SIGNED 9-25-08

NSN 7540-01/52-8070
Previous edition unusable

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED

DE-AC28-01RW12101/128

PAGE

OF

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150

NAME OF OFFEROR OR CONTRACTOR

BECHTEL SAIC COMPANY LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>Requirements and Part II, Section I - Contract Clauses with the following pages of this modification;</p> <p>2. Replace Part III, Section J, Appendix A - Personnel Appendix with the revised Appendix A, included as Attachment 1;</p> <p>3. Replace Part III, Section J, Appendix D - Key Personnel with the revised Appendix D, included as Attachment 2;</p> <p>4. Replace Part III, Section J, Appendix E - List of Applicable Directives with the revised Appendix E, included as Attachment 3;</p> <p>5. Replace Part III, Section J, Appendix I - Reports and Plans Requirements List with the revised Appendix I, included as Attachment 4; and</p> <p>6. Replace Part III, Section J, Appendix J - Performance Evaluation and Measurement Plan (PEMP) Revision 13 with PEMP Revision 13 change 1, included as Attachment 5.</p> <p>The work under this contract should be conducted in accordance with the contractor's QA Program.</p> <p>This modification is QA:QA</p> <p>Period of Performance: 11/14/2000 to 03/31/2009</p>				

Contract No. DE-AC28-01RW12101
Modification No. 128

PART I - THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

PART I - THE SCHEDULE

SPECIAL CONTRACT REQUIREMENTS

SECTION H

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Part I - The Schedule

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 REPRESENTATIONS AND CERTIFICATIONS

The Representations, Certifications, and Other Statements of Offeror for this Contract as completed by the Contractor are hereby incorporated in this Contract by reference.

H.2 MODIFICATION AUTHORITY

Notwithstanding any of the other provisions of this contract, a Contracting Officer shall be the only individual on behalf of the Government to:

- a. Accept nonconforming work;
- b. Waive any requirement of this contract; or
- c. Modify any term or condition of this Contract.

H.3 SUBCONTRACT LABOR LAW APPLICATION

- a. For all subcontracts for the manufacture or furnishing of supplies subject to the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.
- b. For subcontracts relating to construction, refer to the Section I, Contract Clause DEAR 970.5236-1, entitled, "Government Facility Subcontract Approval."

H.4 SMALL BUSINESS SUBCONTRACTING PLAN

The Small Business Subcontracting Plan with goals, submitted by the Contractor consistent with the provisions of Section I, Contract Clause, FAR 52.219-9, entitled, "Small Business Subcontracting Plan" and approved by the Contracting Officer is incorporated into this Contract as Appendix C in Section J. Prior to the beginning of each Fiscal Year, the Contractor shall also submit an "annual" subcontracting plan, which shall establish subcontracting goals as described in paragraph (d)(1) and (2) of FAR 52.219-9, entitled, "Small Business Subcontracting Plan." The annual plan shall be reviewed for approval by the Contracting Officer and shall be incorporated into this Contract.

H.5 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM TARGETS

Small Disadvantaged Business Participation Program targets submitted by the Contractor in its proposal will be incorporated into this Contract. To the extent that such concerns specifically were identified in the proposal, they are also incorporated into this Contract and the Contractor shall notify the Contracting Officer of any substitutions of firms. The Contractor's performance in meeting the targets contained in its proposal and its demonstrated commitment to maximizing the participation of Small Disadvantaged Business concerns in Contract performance may be assessed as a functional standard under this Contract, as appropriate.

H.6 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

On February 12, 2001, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract No. DE-AC08-91RW00134.

H.7 APPROVAL OF EXPENDITURES

Whenever approval of an action by the Contracting Officer is required with respect to any expenditure or commitment by the Contractor under the terms of this Contract, the Government shall not be responsible for such expenditures or commitments unless and until such approval or action is obtained or taken.

H.8 INTER-CONTRACTOR PURCHASES

Through an Inter-Contractor Purchase, an integrated Contractor can perform work for another integrated Contractor, which includes Bettis Yucca Mountain Project Support. Two funding mechanisms can be utilized under the Inter-Contractor Purchase. An annual scope of work of \$250,000 or less can be funded via cash orders which are Contractor purchase orders describing the requested scope of work, the deliverables, completion date, and the funding source; integrated cash orders are written directly to an integrated Contractor. The second funding mechanism is a DOE Interoffice Work Order covering annual scopes of work exceeding \$250,000. A DOE Interoffice Work Order is a document containing similar information to the cash order and is written or approved by two DOE Offices. Funding for these efforts is provided through the DOE Office to the performing integrated DOE Contractor via their Approved Funding Program.

H.9 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS

On February 12, 2001, the Contractor shall assume responsibility for all existing subcontracts and other agreements from Contract No. DE-AC08-91RW00134. These include: (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permits, (e) collective bargaining agreements, (f) site-wide plans (e.g., safety and security plans) and (g) any other agreements in effect prior to February 12, 2001.

H.10 PRIVACY ACT SYSTEMS OF RECORDS

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Section I, Contract Clause FAR 52.224-2, entitled, "Privacy Act."

<u>DOE System No.</u>	<u>Title</u>
DOE-28	General Training Records
DOE-33	Personnel Medical Records
DOE-34	Employee Assistance Program (EAP) Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-51	Employee and Visitor Access Control System
DOE-52	Foreign National Visitor
DOE-53	Access Authorization for ADP Equipment

The above list shall be revised from time to time by mutual agreement between the Contractor and the Contracting Officer as may be necessary to keep it current. Such changes need not be formally incorporated before the annual contract update modification, but shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in Paragraph (a)(1) of the Section I, Contract Clause, FAR 52.224-2, entitled, "Privacy Act."

H.11 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

Documents originated by the Contractor or furnished by the Government to the Contractor in connection with this Contract may contain Unclassified Controlled Nuclear

Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE Regulations and Directives.

H.12 CONTRACTOR EMPLOYEES: EMPLOYER/EMPLOYEE RELATIONSHIP

Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the DOE or the Government; however, nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

The Contractor's employees normally engaged in the performance of this contract may be retained on the allowable costs payroll and used intermittently by the Contractor on work other than in the performance of this contract provided, however, that during the period of such intermittent use, including time spent in traveling to and from the site of such work, the employee shall not be deemed to be performing work under this contract, and insurance coverage of the Contractor, the premiums or costs of which are allowable costs under this contract (including Workmen's Compensation, employer's liability and public liability insurance), shall not be applicable or used to defend against or pay any liability of the Contractor to such employees (or persons claiming through them) or to other persons. With respect to such intermittent services, the Contractor shall credit to the account of the government, as provided in Section I, Contract Clause, DEAR 970.5232-2, entitled, "Payments and Advances," or as otherwise directed by the DOE, the amounts paid to the Contractor to the employees or other persons, or contributed to any benefits plans for such employees, from Government funds, which relate to such employees' work for the Contractor not in the performance of this contract. Set amount or amounts shall be at full cost recovery and include, but not be limited to, travel, per diem, and surviving spouse payments, if any, actual salaries and wages of the persons performing such services plus a percentage factor of such salaries and wages in lieu of direct payment for payroll taxes and benefits. The aforementioned factor shall be established for each ensuing year as mutually agreed between the Contracting Officer and the Contractor.

H.13 PLANNED PROCUREMENTS

The contractor will provide to the Contracting Officer a schedule of planned procurements (including subcontracts, purchase orders, etc.) or modifications to same, over \$100K for a 24 month period. Such schedules shall be updated and submitted by each September 15 and March 15 with the first schedule due September 15, 2001. The schedule shall reflect estimated value, type of subcontract, purchase order, etc., description of service or product and, if applicable, a justification for other than firm fixed price, sealed bid, subcontract agreements.

H.14 CONTRACTOR AFFILIATED SOURCES

It is recognized that the technical and staffing requirements of the Contractor will vary during the performance of this Contract. The technical and staff support capabilities of the Contractor and its affiliates were proposed and recognized in the competitive selection process. Therefore, the Contractor may obtain direct support from affiliates to meet technical and staffing requirements on an as-needed basis, subject to the requirements of DEAR 970.4402-3. The process and procedure for utilizing support from affiliates shall be approved by the Contracting Officer.

Services from an approved Contractor Affiliate will be at cost without additional fee or profit. Allowable costs will include direct costs and all allocable affiliate indirect costs in accordance with applicable federal and/or DOE principles and cost accounting standards. Temporary assignments of Contractor Affiliate personnel to the Yucca Mountain Site or other sites identified in this Contract shall bear indirect costs based upon a DCAA recommended/approved offsite rate that excludes home office facilities related costs. However, in the event a DCAA recommended/approved offsite rate does not exist for a specific Contractor Affiliate, the Contractor Affiliate, while required to develop an offsite rate, shall not be required to obtain DCAA approval of the offsite rate unless the temporary assignment exceeds 6 months.

Contractor's Affiliates providing such services and personnel shall perform the work in accordance with applicable terms and conditions of the Contract.

H.15 LOBBYING RESTRICTIONS

The Contractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.16 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

H.17 LIMITATION OF LONG TERM LIABILITY REGARDING PERSONNEL COSTS

It is DOE's goal to develop an approach to personnel costs which maintains the full value of worker's benefits packages while at the same time limiting DOE's long term liability. The Contractor agrees to submit a plan to DOE during FY 2001 for achieving this goal.

H.18 WORK AUTHORIZATION SYSTEM

- a. Prior to the start of each Fiscal Year, the DOE shall provide the Contractor program execution guidance in sufficient detail to develop an estimated cost, scope, and schedule. The Contractor shall submit to the Contracting Officer or other designated official, a detailed Scope of Work (SOW), a budget of estimated costs, and a schedule of performance for the work to be performed during the next Fiscal Year.
- b. The Contractor and DOE shall mutually establish a budget of estimated costs, detailed SOW, and schedule of performance for each milestone/deliverable at level 3 or as otherwise specified by the Contracting Officer. The established estimated costs, detailed SOW, and schedule of performance shall be incorporated into WADs, signed by the Contractor and issued by the Contracting Officer, which are incorporated by reference into this Contract. If agreement cannot be reached on the scope, schedule, and estimated cost for the WADs, the Contracting Officer shall issue unilateral WADs pursuant to this clause which shall not be subject to appeal under the Section I, Contract Clause, FAR 52.233-1, entitled "Disputes."
- c. No activities shall be authorized and no costs incurred until either the Contracting Officer has issued WADs or the Contracting Officer has issued direction concerning continuation of activities.
- d. Work Authorization Directives. The WADs authorizing the Contractor to proceed with performance shall be provided to the Contractor by the Contracting Officer. Each WAD so issued will include as a minimum the following:
 - (1) Authorization number and effective date;
 - (2) Description of work;
 - (3) Applicable paragraph reference to the SOW;
 - (4) Estimated cost (and estimated cost for the work to be performed under this authorization if the WAD performance schedule exceeds the current contract);

- (5) Appropriate performance objectives, schedule, and milestone dates;
 - (6) Cost, schedule, and all other reporting requirements;
 - (7) Date of issue;
 - (8) Contractor's signature;
 - (9) Contracting Officer's signature.
- e. Technical Direction. Government direction of the performance of all work authorized for performance under this Contract shall be in accordance with the Section I, Contract Clause, DEAR 952.242-70, entitled "Technical Direction."
- f. Modification of Work Authorization Directives. The Contracting Officer may at any time and without notice issue changes to the WADs within the SOW of the Contract requiring additional work, or directing the omission of, or changes to the work. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (b) of this clause shall be submitted by the Contractor in accordance with paragraphs (a) and (b) of this clause. In addition, the Contractor shall notify the Contracting Officer immediately whenever the cost incurred to date plus the projected cost to complete the work on any WAD is expected to exceed or underrun the estimated cost by ten percent of the WAD. In this case, the Contractor shall submit a proposal for a change in the WAD in accordance with paragraphs (a) and (b) of this clause.
- g. Expenditure of Funds and Incurrence of Cost. The performance of work and the incurrence of cost in the execution of the SOW of this Contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the provisions of the Section I, Contract Clause, DEAR 970.5232-4, entitled "Obligation of Funds."
- h. Order of Precedence. This clause is of lesser order of precedence than the Section I, Contract Clauses, DEAR 970.5232-4, entitled, "Obligation of Funds"; and DEAR 970.5232-2, entitled, "Payments and Advances." The Contractor is not authorized to incur costs on any WAD which is not in compliance with the other terms and conditions of this Contract.
- i. In the event there is a conflict between the requirements of this subsection and Section J, Appendix E, "List of Applicable Directives," as amended, the Contractor shall obtain guidance from the Contracting Officer.

- j. Responsibility to achieve Environment, Safety, Health, and Security Compliance. Notwithstanding the other provisions of this subsection, the Contractor has, in the event of an emergency, authority to take corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the Contracting Officer within 24 hours after such action was initiated and, within 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraph (a) and (b) of this subsection.

H.19 REPORTING REQUIREMENTS

- a. Work Breakdown Structure (WBS)

The Contract WBS, an extension of the Program WBS, shall reflect all program and project work scope. The Contract WBS together with the Program WBS shall be the basis for all reports required by this subsection. The Contract WBS Index and Dictionary shall be approved by the Contracting Officer, and shall conform with all implementation guidance. It shall be submitted to the Contracting Officer by January 12, 2001.

- b. Periodic Plans and Reports

The Contractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the Contracting Officer. These periodic plans and reports shall be submitted at the interval, and to the addresses and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The plans and reports expected to be submitted by the Contractor are described generally as follows:

General Management Reports narratively summarize schedule, labor, and cost plans and status, and provide explanations of status variances from plans.

Schedule/Labor Cost Reports provide information on schedule, labor and cost plans and status.

Performance Measurement Reports provide earned value cost and schedule performance data, both cumulative and at completion, as well as milestone status, financial status, and technical performance. Also provided in these reports are analyses of cost and schedule performance trends, and identification of actual and potential problems. Integrated technical, cost and schedule variance analyses and corrective action plans will be provided if variances exceed DOE reporting

thresholds provided by the Contracting Officer. Performance will be reported to DOE at the lowest level elements of the Program WBS unless directed differently by the Contracting Officer.

Technical Reports are the means by which scientific, technical, and engineering information acquired in the performance of the work is disseminated.

Contract Fund Status Reports provide outstanding commitments plus incurred costs in order to ensure that authorized funding limits will not be exceeded and to provide early warning if funding limits could be exceeded.

Letter Reports, if requested by DOE, provide quick response information on inquiries or sudden problems/issues.

Plans and reports shall be prepared by the Contractor in such a manner as to provide for:

- (1) consistency with the contract Statement of Work, the WADs, the approved WBS and the existing accounting structure, as appropriate.
- (2) correlation of data among the various plans and reports.

c. Changes in Work Effort

The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Authorization System. During performance of this contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the Scope of Work or WADs. The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the Contracting Officer:

- (1) incorporate contractual changes affecting estimated cost, schedule, and other relevant terms and conditions of the contract, in a timely manner;
- (2) reconcile estimated costs for those elements of the WBS identified in the contract as either priced line items or discrete WADs, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:
 - (a) Changes to the authorized work; and,
 - (b) Internal replanning in the detail needed by management for effective control;

- (3) prohibit retroactive changes to records pertaining to work performed that will change previously-reported costs except for correction of errors and routine accounting adjustments;
 - (4) prevent revisions to the contract estimated costs except for Government-directed or approved changes to the contractual effort; and
 - (5) document changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.
- d. The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's reporting system described in (b) above.
- e. The Contractor shall include the requirements of this clause in all subcontracts that are cost-reimbursement type of contracts when:
- (1) the value of the subcontract is greater than \$2 million, unless specifically waived by the Contracting Officer, or
 - (2) the Contracting Officer determines that the contract/subcontract effort is, or involves, a critical task related to the contract.

H.20 PERSONAL AND REAL PROPERTY MANAGEMENT

The Contractor shall implement and maintain DOE-approved real and personal property systems which provide for the acquisition, accountability, segregation, physical protection, identification, financial reporting, physical inventory, required maintenance, motor equipment management, materials management, excess property reporting and utilization, and disposal of real and personal property assets.

H.21 THIRD PARTIES

Nothing contained in this Contract or its amendments shall be construed to grant, vest, or create any rights in any person not a party to this Contract. This provision is not intended to limit or impair the rights which any person may have under applicable Federal Statutes.

H.22 WORK ALLOCATION

- a. It is DOE policy to foster labor peace and encourage work allocation in such a manner that the work will be performed in an expeditious and resource-economical fashion by trained employees. Occasionally, work which does not clearly fall within the jurisdiction of any single labor or collective bargaining

agreement to which the Contractor is a party, must be performed (such work is hereinafter referred to as "Unassigned Work").

- b. The Contractor shall establish a process, consistent with applicable DOE guidance, that is reasonably calculated to allocate Unassigned Work in a manner agreeable to the affected unions and consistent with the requirements of applicable law and the terms of this Contract.
- c. Nothing in this clause shall be construed to restrict the Contractor from performing Unassigned Work in accordance with either the terms of this Contract or written direction of the Contracting Officer.

H.23 AGREEMENT REGARDING PATENT AND DATA CLAUSES

The Department of Energy anticipates the promulgation of revisions to the following clauses of this contract prior to, or shortly after, the award of this Contract. Subsequent to such promulgation, the Contractor agrees to negotiate, in good faith, the substitution of these revised clauses for the corresponding existing contract Clauses.

DEAR 970.5227-4, Authorization and Consent

DEAR 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement

DEAR 970.5227-6, Patent Indemnity

H.24 HUMAN RESOURCES

- a. Advance Understanding on Human Resources Cost

DOE Order 350.1, Human Resources Management Program, will serve as the governing document for Contractor human resources costs. However, if warranted, the Department and the successful Offeror may reach a separate advance understanding for selected Contractor human resources costs. Advance understandings enable both the Contractor and the Department to determine allocability, allowability and reasonableness of costs prior to incurrence, thereby avoiding subsequent disallowance and disputes; and assure prudent expenditure of public funds. Areas generally covered by advance understandings include compensation, welfare benefits, labor relations, retirement plans, training, educational assistance, awards programs, employee assistance, and paid leave and holidays. It is understood that any advance understandings will be appended to the contract.

It is the Department's intention that nothing in an advance understanding will restrict the Contractor's ability to attract and retain critically skilled employees to meet DOE mission objectives. Moreover, it is the Contractor's responsibility to

notify DOE when any obstacles are encountered that could impact the recruitment and retention of critically skilled employees.

b. Labor Relations

The Contractor shall maintain positive labor-management relations. The Contractor shall respect the right of employees to self-organize, to form, join or assist the labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also to have the right to refrain from any or all of such activities.

As the Contractor will be responsible at the time of transition for performing substantially the same operations as the previous incumbent Contractor, the Contractor shall be obligated to recognize the current bargaining agents and their existing collective bargaining agreements.

H.25 CORPORATE HOME OFFICE EXPENSES

No corporate home office expense of the Contractor shall be allowable under this Contract without the prior written approval of the Contracting Officer.

H.26 SEPARATE CORPORATE ENTITY

The work performed under this Contract by the Contractor shall be conducted by a separate corporate entity from its parent company(ies). The separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.

H.27 RESPONSIBLE CORPORATE OFFICIAL

Notwithstanding the Section H Contract Clause, entitled, "Performance Guarantee," the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor. Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: Thomas F. Hash
(Offeror complete)
Position: President
(Offeror complete)
Company: Bechtel National, Inc.
(Offeror complete)

H.28 PERFORMANCE GUARANTEE

The Contractor is required by other provisions of this Contract to organize a dedicated corporate entity to carry out the work under the Contract. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance as evidenced by the Performance Guarantee Agreement incorporated in the Contract in Section J, Appendix G. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.29 CONSECUTIVE NUMBERING

Due to automated procedures employed in formulating this document, clauses contained within it may not always be consecutively numbered.

H.30 CONFIDENTIALITY OF INFORMATION

- a. To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by the Contractor, is in public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.
- b. The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to

any person or entity except those persons within the Contractor's organization directly concerned with the performance of the Contract.

- c. The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this Contract, and to supply a copy of such agreement to the Contracting Officer.
- d. The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- e. This clause shall flow down to all appropriate subcontracts.

H.31 ENVIRONMENTAL JUSTICE

The Contractor shall embrace the principles of Environmental Justice by complying with all applicable environmental regulations and by focusing on nondiscrimination in its programs that affect human health and the environment. The Contractor shall comply with Executive Order 12898 on Environmental Justice.

H.32 ENVIRONMENT, SAFETY, AND HEALTH

The Contractor will notify the Contracting Officer, in writing, of any written direction or instruction, which contradicts, limits, or compromises those environment, safety, and health requirements. The Contractor shall submit by September 15, 2001, and each year thereafter by September 15, an update to the approved Safety Management System, which is documented in the Integrated Safety Management Description Document (ISMDD), for the following fiscal year. Any changes to the approved Safety Management System, after the Contracting Officer's initial approval shall be approved by the Contracting Officer.

This Contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract, except with respect to facilities/activities for which separate Authorization Agreement(s) are necessary. Authorization Agreements are to be used to establish, document, and control the safety requirements and other parameters for: (a) Category 2 non-reactor nuclear facilities new starts; (b) Weapon Program Startups; and (c) as directed by the Contracting Office to ensure adequate protection of the workers, the public, and the environment. Updates and changes to any approved Authorization Agreements(s) shall be subject to Contracting Officer approval.

H.33 WITHDRAWAL OF WORK

- a. The Contracting Officer reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another Contractor or to have the work performed by Government employees.
- b. Work may be withdrawn for any other reason deemed by the Contracting Officer to be in the best interests of the Government.
- c. If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity.

H.34 SUBCONTRACTS CONSENT AND FLOW DOWN REQUIREMENTS

- a. Prior to the placement of subcontracts and in accordance with the Section I, Contract Clause, DEAR 970.5244-1, entitled, "Contractor Purchasing System," the Contractor shall ensure that:
 - (1) They contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts. Particular attention should be directed to the potential flow down applicability of the Section I, Contract Clauses, FAR 52.219-8, entitled, "Utilization of Small Business Concerns" and FAR 52.219-9, entitled, "Small Business Subcontracting Plan;"
 - (2) Any applicable subcontractor Certificate of Current Cost or Pricing Data (see FAR 15.804-2) and subcontractor Representations and Certifications are completed; and
 - (3) Any required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

H.35 ENVIRONMENTAL, SAFETY AND HEALTH COMPLIANCE DATA

Data required to assure environmental, safety and health compliance by the Contractor in its activities on behalf of the Department of Energy shall not be considered proprietary data in the context of DEAR 970.5227-1, "Rights In Technical Data--Facilities (Dec

2000)". DOE retains unlimited rights in all records, data, and audits involving compliance with Federal and State environmental, safety and health Statutes.

H.36 SECURITY

In addition to the provisions in DEAR 952.204-2, Security, the Contractor agrees to comply with Security regulations of other government agencies when applicable.

H.37 CONTRACTOR USE OF GOVERNMENT VEHICLES--WORK TO DOMICILE

Government furnished, owned or leased vehicles shall be used for official purposes only. Any cost or expense associated with non-official use of government furnished, owned or leased vehicles is an unallowable cost and is therefore not reimbursable under the contract. Official purposes do not ordinarily include transportation of a Contractor's employee between domicile and place of employment. However, Contractor employees driving government furnished, owned or leased vehicles to their personal residences will be considered to do so for official purposes if all the following conditions exist:

- (1) Unusual and special circumstances occur when Contractor employees are required to work unusual hours and regular transportation is not available.
- (2) The Contractor has defined in writing the special and unusual circumstances in which the driving of government furnished, owned or leased vehicles by Contractor employees to their personal residences will be considered used for official purposes and the DOE Contracting Officer has approved them.
- (3) The Contractor has designated, in writing, specific positions who are authorized to approve the driving of government vehicles by Contractor employees to their personal residences.
- (4) The Contractor maintains records necessary to clearly establish the extent that home-to-work transportation was for official purposes. The Contractor shall determine, subject to approval of the Contracting Officer, the organizational level at which the records should be maintained and kept.

The records should be easily accessible for audit and should contain, as a minimum, the following information:

- (a) Name and title of employee using the vehicle, as well as the names and titles of any passengers sharing the vehicles;
- (b) Name, Employee Identification Number, and title of person authorizing use;
- (c) Vehicle license number;

- (d) Date and time of day of vehicle use;
 - (e) Storage location of vehicle;
 - (f) Duration of use; and
 - (g) Special and unusual circumstances requiring home-to-work transportation and negative impact, if such approval is not granted. Approval should not be granted if bus services are reasonably available. The approving official should require the sharing of rides to the extent reasonably feasible when government vehicles are authorized.
- (5) The Contractor establishes and enforces penalties for employees who use or authorize the use of government vehicles for other than official purposes.
- (6) This clause shall flow down to subcontractors who utilize Government vehicles.

H.38 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES AND PENALTIES

- a. The Contractor shall accept, in its own name, notices of violations or alleged violations (NOVs/NOAVs) and fines and penalties issued by Federal or State regulators resulting from the Contractor's performance or work under this contract.
- b. The Contractor shall be free to conduct negotiations with regulators regarding NOVs/NOAVs, fines and penalties; however, the Contractor shall not make any commitments or offers to regulators which would bind the Government in any form or fashion, including monetary obligations, without receiving written concurrence from the Contracting Officer or his authorized representative prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

H.39 ELECTRONIC COMMERCE

In compliance with the Government's initiative of "Streamlining Procurement Through Electronic Commerce," and presenting a "single face" to industry, the Contractor shall strive to implement, within available funding, an Electronic Commerce System that will generate a paperless, automated, integrated procurement/payment system. This system shall, to the maximum practicable extent, subject to DOE approval, allow for: electronic request for quotations, quotations, and purchase orders, electronic invoices and

remittance advice; full integration between the procurement, receiving, inventory control and accounting systems; and, accounting system programs that compare invoices, receipts and orders and automatically issue electronic funds transfer payments.

H.40 CONTROL OF NUCLEAR MATERIALS

- a. As used in this clause, the term "Nuclear Materials" is a collective term which includes source material, Special Nuclear Material, and those other materials to which, by direction of DOE, the provisions of DOE's Orders or Directives or the Nuclear Regulatory Commission regarding the control of Nuclear Materials, which have been or may be furnished to the Contractor by DOE, apply. The Contractor shall, in a manner satisfactory to the Contracting Officer, establish accounting and measurement procedures, maintain current records and institute appropriate control measures for Nuclear Materials in its possession commensurate with the national security and DOE policy. The Contractor shall make such reports and permit such inspections as DOE may require with reference to nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.
- b. Transfers of Nuclear Materials shall only be made with the prior written approval of the Contracting Officer, or authorized designee. Nuclear Materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this contract. The Contractor shall be responsible for the control of such Nuclear Materials in accordance with applicable DOE Orders and Directives regarding the control of Nuclear Materials, which have been or may be issued to the Contractor by DOE, and shall make a part of each purchase order, subcontract, and other commitment involving the use of Nuclear Materials for which the Contractor has accountability, which it enters into under this contract, appropriate terms and conditions for the use of Nuclear Materials and the responsibilities of the subcontractor or vendor regarding control of Nuclear Materials. In the case of fixed-price purchase orders, subcontracts, or other commitments involving the use of Nuclear Materials for which the Contractor has accountability, the terms and conditions with respect to Nuclear Materials shall also include the financial responsibilities, if any, regarding such items as losses, scrap recovery, product recovery, and disposal.

H.41 LITIGATION MANAGEMENT PLAN

The Contractor shall prepare a Litigation Management Plan which shall be submitted to the Contracting Officer for approval within 60 days after February 12, 2001. The purpose of the Plan will be to control the cost of litigation and to provide for employment of only that level of private counsel appropriate to a particular requirement. The Plan shall comply with the Guidelines set forth in DOE Acquisition Letter 94-13 of August 25, 1994, and such further instructions as provided by the Contracting Officer.

H.42 SERVICE CONTRACT ACT

The Service Contract Act of 1965 (P.L. 89-286) is not applicable to contracts for the operation of DOE facilities. It is, however, applicable to subcontracts awarded by Contractors operating DOE facilities. The Contractor shall insert in all subcontracts of the character to which the Service Contract Act, as amended, applies the applicable clause specified in FAR 22.1005 or FAR 22.1006, with such modifications as appropriate to reflect the Contractor/subcontractor relationship.

H.43 AGE DISCRIMINATION IN EMPLOYMENT

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any State or local legislation regarding discrimination based on age, and with all applicable regulations thereunder.

H.44 DETERMINATION OF APPROPRIATE LABOR STANDARDS

DOE shall determine the appropriate labor standards, in accordance with the Service Contract Act, the Davis-Bacon Act, or other applicable labor laws which shall apply to work performed under this contract. The Contractor shall provide such information in the form and time frame required by DOE, as may be necessary for DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts, and for obtaining and applying the appropriate wage determinations.

H.45 APPLICATION OF LABOR POLICIES AND PRACTICES

The Contractor agrees to conduct its labor relations program in accordance with DOE's intent that labor policies and practices reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations essential to the successful accomplishment of DOE's programs at reasonable cost. Collective bargaining will be left to the orderly processes of negotiation and agreement between Contractor management and certified employee representatives with maximum possible freedom from Government involvement. For working on DOE facilities and programs critical to the National interest, Contractor management's responsibility includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships.

**H.46 REIMBURSEMENT OF COST AND ALLOWABLE COST PRINCIPLES FOR
TRANSITION PERIOD**

- a. Reimbursement of allowable cost for the transition period will be through the voucher (i.e., invoice) process. DOE will provide the selected Offeror with a detailed description of DOE's voucher process at time of transition.
- b. Allowability of costs for the transition period shall be determined in accordance with Federal Acquisition Regulation 52.216-7, "Allowable Cost and Payment."

**H.47 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR
ENVIRONMENTAL COMPLIANCE ACTIVITIES**

- a. This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as "the parties" for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term "environmental requirements" means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.
- b. Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party that caused the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.
- c. Regardless of which party to this contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this contract related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and pre-existing conditions provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse the DOE (if DOE pays the fine or penalty). The governing provisions of the contract include, without limitation, DEAR 970.5231-4, entitled "Pre-Existing Conditions."

H.48 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE

The Contractor shall establish an internal Price Anderson Amendments Act noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a Price Anderson Amendments Act reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H.49 OTHER CONTRACTORS

There are several other prime Contractors and support service Contractors or other interested parties that the Contractor will interface with in order to accomplish the program mission in an effective and efficient manner. It is expected that the Contractor will cooperate and interface appropriately with all such parties in executing and accomplishing the program requirements. Should there be any conflicts or issues that cannot be resolved by the Contractors, DOE will intervene as necessary and appropriate.

H.50 CONTRACTOR ACCEPTANCE OF OCRWM BASELINE DOCUMENTATION

The Contractor shall process and accept Office of Civilian Radioactive Waste Management (OCRWM) technical baseline documentation and changes thereto only upon written direction from the Contracting Officer (and consistent with OCRWM baseline change control procedures, LP-PMC-009-OCRWM and LP-PMC-010-OCRWM). The Contractor shall maintain its baseline documents current and consistent with the OCRWM Level 1 and 2 technical baseline and in accordance with Sections C2.4E and C2.5 of the Contract. The Contractor shall advise the Contracting Officer in writing of any conflicts in technical baseline document(s) and shall not proceed with affected work until such conflicts are resolved unless otherwise directed by the Contracting Officer in writing.

H.51 SAFETY CONSCIOUS WORK ENVIRONMENT

In conformity with the Nuclear Regulatory Commission's (NRC) May 14, 1996, Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" (61 Federal Register 24336), the Contractor must maintain a working environment in which the Contractor's employees are free to raise safety concerns to the Contractor, to the DOE, or to other government agencies without fear of retaliation. The Contractor specifically agrees to comply with Section 211 of the Energy Reorganization Act (42 U.S.C.A. § 5851), which prohibits NRC licensees or applicants for a license and their contractors or subcontractors, and DOE contractors with Price Anderson indemnification, from discharging or otherwise discriminating against any employee because he or she (i) notifies his/her employer of an alleged violation of the

Atomic Energy Act or the Energy Reorganization Act; or (ii) refuses to engage in any practice made unlawful by either of said acts after having identified the alleged illegality to his/her employer; or (iii) testifies in or commences a Federal or State proceeding or enforcement action relating to either of said acts; or (iv) assists or participates in such a proceeding or in any other action to carry out the purpose of said acts. The Contractor shall inform its employees and management of the importance of raising safety concerns and how to raise safety concerns through the Contractor's management, through the DOE's management (including, without limitation, use of the OCRWM Employee Concerns Program), and through other government agencies.

H.52 "SIGNIFICANT MATTERS" FOR LEGAL MANAGEMENT PURPOSES

For the purposes of compliance with 10 CFR Part 719 and in implementing the Litigation Management Plan specified in Section H, Contract Clause H.41, the following matters have been determined to be "significant matters" under 10 CFR § 719.2:

- (a) An employee complaint filed under the Department of Energy regulations at 10 CFR Part 708, "DOE Employee Protection Program";
- (b) An employee complaint filed under the Federal Acquisition Regulation at 48 CFR Subpart 3.9, "Whistleblower Protections for Contractor Employees";
- (c) An employee complaint filed under the Nuclear Regulatory Commission regulations at 10 CFR 63.9, "Employee protection"; or
- (d) An employee complaint filed under any other employee protection regulations that implement Section 211 of the Energy Reorganization Act, 42 U.S.C.A. § 5851.

H.53 COMPLIANCE WITH 10 CFR PART 21

The Contractor shall promulgate programs and procedures that conform to the requirements of 10 CFR Part 21 and any related Nuclear Regulatory Commission guidance or guidance deemed to be applicable by the Department of Energy. Such programs and procedures shall be effective and implemented on the date upon which a license application for authorization to construct a geologic repository at Yucca Mountain is submitted to the Nuclear Regulatory Commission.

H.54 ADDITION AND ALTERATIONS TO IMPLEMENT EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT AND ITS IMPLEMENTING INSTRUCTIONS

This contract involves contractor operation of Government-owned facilities and/or vehicles and the provisions of Executive Order 13423 are applicable to the Contractor to

the same extent they would be applicable if the Government were operating the facilities or vehicles. Information on the requirements of the Executive Order and its Implementing Instructions may be found at http://ofee.gov/Executive Order/Executive Order13423_main.asp. This requirement includes the Electronics Stewardship requirements of Implementing Instruction XII. When acquiring desktop or laptop computers and computer monitors, the Contractor shall acquire Electronic Product Environmental Assessment Tool registered products conforming to IEEE 1680-2006 Standard and ranked at least bronze, provided such products are life cycle cost efficient and meet applicable performance requirements. Information on EPEAT-registered computer products is available at www.epeat.net.

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Modification No. 128

PART II – CONTRACT CLAUSES

SECTION I

PART II - CONTRACT CLAUSES**SECTION I****TABLE OF CONTENTS**

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Note 1: The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1), the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9), and the U.S. Department of Energy Procurement Regulations (DOE-PR) (41 CFR Chapter 9).

Note 2: “(Modified)” means that a minor change(s) in wording of the clause has been made for the purpose of clarification only and not with the intent of altering the meaning, intent, substance, or the principles expressed in the clause.

PART II

SECTION I

CONTRACT CLAUSES

I.1. FAR 52.202-1 DEFINITIONS (DEC 2001) (As modified by DEAR 952.202-1 DEFINITIONS (MAR 1995))

Definitions (Dec 2001)

- (a) "Agency head" or "head of the agency" means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item" means-
 - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that-
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for-
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining

whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

- (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if-
 - (i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services-
 - (i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in paragraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

- (8) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) "Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).
- (e) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (f) "Non-developmental item" means-
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use. (g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

I.2. FAR 52.204-1 APPROVAL OF CONTRACT (DEC 1989)

This Contract is subject to the written approval of the DOE Procurement Executive or designee and shall not be binding until so approved.

I.3. FAR 52.225-1 BUY AMERICAN ACT - SUPPLIES (JUNE 2003)

(a) *Definitions.* As used in this clause—

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Act Certificate.”

I.4. FAR 52.225-11 BUY AMERICAN ACT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (DOE DEVIATION) (FEB 2008)

(a) *Definitions.* As used in this clause—

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);
- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

- (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.
- (2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:
NONE.

- (4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—
 - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

- (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include

adequate information for Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
 - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

- (d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

I.5. FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2007)

- (a) Definitions. As used in this clause-

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

- (i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212(a));
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
 - (v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39.
 - (vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.6. FAR 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—
 - (1) By the Contractor under a cost-reimbursement contract; and

- (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.
- (c) Contractors shall submit the above referenced transportation documents to Audit Division, Room G342, General Services Administration, 1800 F. Street, NW., Washington DC 20405.

I.7. FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT) (MAY 2004)

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if-
 - (1) The Contracting Officer determines that a termination is in the Government's interest; or
 - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government-
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; provided, however, that the Contractor
 - (i) is not required to extend credit to any purchaser and
 - (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an

allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
- (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
 - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.
 - (3) The reasonable costs of settlement of the work terminated, including-
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
 - (4) A portion of the fee payable under the contract, determined as follows:
 - (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

- (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
- (5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor-
 - (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
 - (2) The amount finally determined on an appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted-
 - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

I.8. FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of the clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulations – <http://www.arnet.gov/far/>

- 1. FAR 52.203-3 GRATUITIES (APR 1984)
- 2. FAR 52-203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)
- 3. FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)
- 4. FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)
- 5. FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
- 6. FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
- 7. FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)
- 8. FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

9. FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006)
10. FAR 52.215-8 OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)
11. FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)
12. FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)
13. FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008)
14. FAR 52.219-16 LIQUIDATED DAMAGES--SUBCONTRACTING PLAN (JAN 1999)
15. FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM--DISADVANTAGED STATUS AND REPORTING (OCT 1999)
16. FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
17. FAR 52.222-3 CONVICT LABOR (JUN 2003)
18. FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 2005)
19. FAR 52.222-6 DAVIS-BACON ACT (JUL 2005)
20. FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)
21. FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)
22. FAR 52.222-9 APPRENTICES AND TRAINEES (JUL 2005)
23. FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)
24. FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JUL 2005)
25. FAR 52.222-12 CONTRACT TERMINATION DEBARMENT (FEB 1988)
26. FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)
27. FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)
28. FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)
29. FAR 52.222-16 APPROVAL OF WAGE RATES (FEB 1988)
30. FAR 52.222-17 LABOR STANDARDS FOR CONSTRUCTION WORK - FACILITIES CONTRACTS (FEB 1988)
31. FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)
32. FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
33. FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007)
34. FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)
35. FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

36. FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)
37. FAR 52.223-2 CLEAN AIR AND WATER (APR 1984)
38. FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) ALTERNATE I (JUL 1995)
39. MOVED TO I.66 IN FULL TEXT
40. FAR 52-223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)
41. FAR 52-223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)
42. FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)
43. FAR 52.224-2 PRIVACY ACT (APR 1984)
44. FAR 52.225-8 DUTY-FREE ENTRY (FEB 2000)
45. FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006)
46. FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)
47. FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008)
48. FAR 52.232-17 INTEREST (JUN 1996)
49. FAR 52.232-18 AVAILABILITY OF FUNDS (APR 1984)
50. FAR 52.233-1 DISPUTES (JUL 2002) ALTERNATE I (DEC 1991)
51. FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996)(ALTERNATE 1) (JUN 1985)
52. FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)
53. FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)
54. FAR 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)
55. FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)
56. FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)
57. FAR 52.242-13 BANKRUPTCY (JUL 1995)
58. FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)
59. FAR 52.246-25 LIMITATION OF LIABILITY - SERVICES
60. FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)
61. FAR 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUN 2003)
62. FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)
63. FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)
64. FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)
65. FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)
66. FAR 52.253-1 COMPUTER-GENERATED FORMS (JAN 1991)
67. FAR 52.222.39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)

I.9. FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or Contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or Contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

I.10. DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

- (a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.
- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

I.11. DEAR 952.204-2 SECURITY (MAY 2002)

- (a) *Responsibility.* It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) *Regulations.*(Modified) The Contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

- (c) *Definition of classified information.* The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) *Security clearance of personnel.* The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and EO 12356.)

(j) *Foreign Ownership, Control or Influence.*

- (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer
- (2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.
- (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.
- (4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including the paragraph, in all subcontract under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract, Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor or any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.
- (5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and

for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

I.12. DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the Contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders).

The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The Contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the Contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are

declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The Contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

I.13. DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994)

- (a) In connection with any activities in the performance of this contract, the Contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the Contractor by written notice as sensitive foreign nations. The Contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the Contracting Officer if the Contractor determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the Contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.
- (b) The provisions of this clause shall be included in any subcontracts.

I.14. DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)

- (a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.
- (b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
- (c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.

- (d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.
- (e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.
- (f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.
- (g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

I.15. DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

- (a) DOE intends to use U.S. Government license tags.
- (b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

I.16. DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)

- (a) Purpose. The purpose of this clause is to ensure that the Contractor
 - (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and
 - (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this clause,

affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Contractor's performance of work under this Contract for a period of five years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this Contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case, the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer, it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

- (B) compete for the work for the Department based on such information for a period of six (6) months after either the completion of this Contract or until such information is released or otherwise made available to the public, whichever is first;
 - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
- (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The Contractor may use technical data it first produces under this Contract for its private purposes consistent with paragraphs (B)(2)(I) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.
- (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the Contract for convenience if it deems such termination to be in the best interest of the Government.
 - (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this Contract for default.

- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the Contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.
- (f) Subcontracts.
 - (1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "contract," "Contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.
 - (2) Prior to the award under this Contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

I.17. DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

- (a) Notwithstanding any other provisions of the Contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this Contract, the Contractor acquires or proposes to acquire use of real property by:
 - (1) Purchase, on the Government's behalf or in the Contractor's own name, with title eventually vesting in the Government.

- (2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
- (3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.
- (c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I.18. DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this Contract shall be subject to inspection by DOE and shall be preserved by the Contractor until disposal is authorized by DOE or at the option of the Contractor delivered to DOE upon completion or termination of the contract. If the Contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

I.19. DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).
- (b) The Contractor shall request the required OMB clearance from the Contracting Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the Contracting Officer.

I.20. DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

(a) Definition.

Eligible employee means a current or former employee of a Contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility

- (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause),
- (2) who has also met the eligibility criteria contained in the Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, and
- (3) who is qualified for a particular job vacancy with the Department or one of its Contractors with respect to work under its Contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

I.21. DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000)

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

- (1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.
- (2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
- (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.

- (b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
 - (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the contractor's right to perform the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer must:
 - (1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's a change under the Changes clause of the contract;
 - (2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order; or
 - (3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR. [*81009]

- (f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

I.22. DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)

- (a) Authority. This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial Protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- (d) Indemnification.
 - (1) To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against
 - (i) claims for public liability as described in subparagraph (d)(2) of this clause; and
 - (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
 - (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which

- (i) arises out of or in connection with the activities under this contract, including transportation; and
 - (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) Waiver of Defenses.
 - (1) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
 - (2) In the event of an extraordinary nuclear occurrence which:
 - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the Contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault or persons indemnified, including, but not limited to:
 - (1) Negligence;
 - (2) Contributory negligence;
 - (3) Assumption of risk; or

- (4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (B) Any issue or defense as to charitable or governmental immunity; and
 - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
- (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
 - (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this Contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:
 - (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

- (iv) Shall not apply injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions of claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to
- (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and
 - (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.
- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled "Contract Disputes," provided, however, that this clause shall be subject to the clauses entitled "Covenant Against Contingent Fees," to the portion of a clause of this Contract providing specifically for examination of records relating to this Contract by the Comptroller General, and to any provisions that are later added to this Contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223c. of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or "k." of the Act for the activities under the subcontract.

I.23. DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (DEC 2000)

- (a) The contractor shall take advantage of travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs

and the discounted services are reasonably available. Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.

- (b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.
- (c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.
- (d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.
- (e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.
- (f) Obtaining travel discounts.
 - (1) To determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.
 - (2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors. SIGNATURE, Title and telephone number of Contracting Officer.

I.24. DEAR 952.215-70 KEY PERSONNEL (DEC 2000)

- (a) The personnel listed below or elsewhere in this contract [Section J, Appendix D] are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:
 - (1) Notify the Contracting Officer reasonably in advance;
 - (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and
 - (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

I.25. DEAR 970.5203-1 MANAGEMENT CONTROLS (MAY 2006)

- (a) (1) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted including consideration of outsourcing of functions by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

- (2) The systems of controls employed by the contractor shall be documented and satisfactory to DOE.
 - (3) Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.
 - (4) The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. Annually, or at other intervals directed by the contracting officer, the contractor shall supply to the contracting officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of 970.5232-3, Accounts, records, and inspection.
- (b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

I.26. DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)

- (a) The contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, outsourcing decisions, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.
- (b) The contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and

affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.

- (c) The contractor may consult with the contracting officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.
- (d) The contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

I.27. DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000)

- (a) Organization chart. As promptly as possible after the execution of this contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.
- (b) Supervisory representative of contractor. Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.
- (c) Control of employees. The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the contracting officer may require, with the approval of the Secretary of Energy, the contractor to remove the employee from work under the contract. This includes the right to direct the contractor to remove its

most senior key person from work under the contract for serious contract performance deficiencies.

- (d) Standards and procedures. The contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

I.28. DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)

- (a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- (b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

I.29. DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)

- (a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.
- (b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may,

from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."

- (c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.
- (d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
- (e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

I.30. DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.
- (b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause.]
 - (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/ health-related records and similar files), and non-employee patient medical/health related records, except for those records described by the contract as being maintained in Privacy Act systems of records.
 - (2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
 - (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and
 - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
 - (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

- (ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- (c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- (f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

- (g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
 - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
 - (2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
 - (3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I.31. DEAR 970.5208-1 PRINTING (DEC 2000)

- (a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "Printing" includes the following processes: Composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) The Contractor shall include the substance of this clause in all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

I.32. DEAR 970.5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000) ALTERNATES II & III (DEC 2000)

- (a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."

- (b) **Fee Negotiations.** Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the contracting officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The contracting officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the contracting officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.
- (c) **Determination of Total Available Fee Amount Earned.**
- (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the contracting officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.
 - (2) The Chief Operating Officer (COO) will be the Fee Determination Official (FDO). The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the COO.
 - (3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the COO, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.

- (4) At the sole discretion of the Government, unearned total available fee amounts may be carried over from one evaluation period to the next, so long as the periods are within the same award fee cycle. (Alternate I (DEC 2000))

- (d) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:
 - (1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:
 - (i) prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or
 - (ii) not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the contracting officer.
 - (2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.
 - (3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The contracting officer shall notify the contractor:
 - (i) of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;

- (ii) of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or
 - (iii) if such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.
- (e) Schedule for total available fee amount earned determinations. The Chief Operating Officer shall issue the final total available fee amount earned determination in accordance with: the schedule set forth in the Performance Evaluation and Measurement Plan(s); or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the contracting officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and contracting officer agree. If the contracting officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the contracting officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (*41 U.S.C. 611*) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.
- (f) Contractor self-assessment. Following each evaluation period, the Contractor shall submit a self-assessment within 10 working days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The Chief Operating Officer, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination. [Alternate III (DEC 2000)]

I.33. REMOVED AND RESERVED

I.34. DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES – FACILITY MANAGEMENT CONTRACTS (Jan 2004) Alt II (Jan 2004)

(a) General. (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon:

(i) The contractor's or contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

(ii) The contractor's or contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions.

(4) If the contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount. (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the contracting officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

(vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(4) (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.

(ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the contracting officer or fee determination official as otherwise payable based on the contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned (provisionally or otherwise), the contractor shall immediately return the excess to the Government. (What the contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(v) At the end of the contract:

(A) The Government will pay the contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned exceeds the sum of the payments the contractor has received; or

(B) The contractor shall return to the Government the amount by which the sum of the payments the contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned. (What the contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(c) Environment, Safety and Health (ES&H). Performance failures occur if the contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.

(i) Type A accident (defined in DOE Order 225.1A).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 232.1A requirements; or internal oversight of DOE Order 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level

of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper

safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(e) Minimum requirements for specified level of performance. (1) At a minimum the contractor must perform the following:

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) All other requirements at a level of performance such that the total

performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(f) Minimum requirements for cost performance. (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

I.35. DEAR 970.5215-4 COST REDUCTION (DEC 2000)

- (a) General. It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the contracting officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.
- (b) Definitions. Administrative cost is the contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

DOE cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

- (1) a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort; or
 - (2) a design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the contracting officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.
- (c) Procedure for submission of CRPs.

- (1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:
 - (i) Current Method (Baseline)-A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative, and supporting documentation.
 - (ii) New Method (New Proposed Baseline)-A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.
 - (iii) Feasibility Assessment-A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.
- (2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:
 - (i) The proposed contractual arrangement and the justification for its use; and
 - (ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.
- (d) Evaluation and Decision. All CRPs must be submitted to and approved by the contracting officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:
 - (1) Pose a risk to the health and safety of workers, the community, or to the environment;
 - (2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;
 - (3) Require a change in other contractual agreements;
 - (4) Result in significant organizational and personnel impacts;

- (5) Create a negative impact on the cost, schedule, or scope of work in another area;
 - (6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and
 - (7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.
- (e) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the contracting officer. The contracting officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (TBD) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:
- (1) Result in net savings (in the sharing period if a design, process, or method change);
 - (2) Not reappear as costs in subsequent periods; and
 - (3) Not result in any impairment of essential functions.
- (f) The failure of the contracting officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.
- (g) Adjustment to Original Estimated Cost and Fee. If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.
- (h) Sharing Arrangement. If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25% of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

- (i) Validation of Shared Net Savings. The contracting officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the contractor will not be entitled to a share of the net shared savings.
- (j) Relationship to Other Incentives. Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.
- (k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

**I.36. DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS -
MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)**

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

I.37. DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000)

- (a) The contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.
- (b) The contractor shall notify the contracting officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.

- (c) The contracting officer may require the submission, for approval, of a formal annual overtime control plan whenever contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the contracting officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:
 - (1) An overtime premium fund (maximum dollar amount);
 - (2) Specific controls for casual overtime for non-exempt employees;
 - (3) Specific parameters for allowability of exempt overtime;
 - (4) An evaluation of alternatives to the use of overtime; and
 - (5) Submission of a semi-annual report that includes for exempt and non-exempt employees:
 - (i) Total cost of overtime;
 - (ii) Total cost of straight time;
 - (iii) Overtime cost as a percentage of straight-time cost;
 - (iv) Total overtime hours;
 - (v) Total straight-time hours; and
 - (vi) Overtime hours as a percentage of straight-time hours.

I.38. DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

- (a) For the purposes of this clause,
 - (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include subcontractor employees.
- (b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment,

safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:
- (1) Define the scope of work;

- (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the

Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

- (h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.
- (i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may choose not to require the subcontractor to submit a Safety Management System for the contractor's review and approval.

I.39. DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003) as modified by DOE Acquisition Letter 2008-05

- (a) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423 and the U.S. Department of Energy (DOE) Affirmative Procurement Program Guidance. This guidance includes requirements concerning environmentally preferable products and services, recycled content products and biobased products. This guidance is available on the Internet.
- (b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.
- (c) The Contractor shall prepare and submit reports, at the end of the Federal fiscal year, on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their Contractors are to procure with recovered/recycled content.
- (d) If the Contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as this clause. The EPA Comprehensive Procurement

Guidelines identify products which Federal agencies and their Contractors are to procure with recycled content pursuant to 40 CFR 247. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of this clause. Instead, the facility management contractor may include such quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available (i) competitively within a reasonable time, (ii) at a reasonable price, or, (iii) within the performance requirements. If reports are required of the subcontractor, such reports shall be submitted to the facility management contractor. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties

- (e) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "subcontractor" and the term "DOE Recycling Coordinator" will be understood to mean "Contractor Recycling Coordinator."

I.40. DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000) (NOTE per Acquisition Letter 2008-03 Revision 1)

- (a) Program Implementation. The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) Remedies. In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) Subcontracts.
 - (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.

- (2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
- (3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

NOTE per Acquisition Letter 2008-03 Revision 1:

[The purpose of this note is to advise you of changes in 10 CFR 707 which is invoked by DEAR 970.5223-4: 1) the definition of Testing Designated Positions now includes all contractor personnel with security clearances; 2) the percent of personnel to be randomly tested on an annual basis has been decreased from 50% to 30%, and 3) a Workplace Substance Abuse Program plan or revision should be submitted within 30 days from receipt of this notice. Applicants for TDPs are also subject to drug testing.]

I.41. DEAR 970.5226-1 DIVERSITY PLAN (DEC 2000)

The Contractor shall submit a Diversity Plan to the contracting officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The contractor shall submit an update to its Plan annually or with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in **Section J, Appendix H**. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, (5) economic development (including technology transfer), and (6) the prevention of profiling based on race or national origin.

I.42. DEAR 970.5226-3 COMMUNITY COMMITMENTS (DEC 2000)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its

business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

I.43. DEAR 970.5227-1 RIGHTS IN DATA-FACILITIES (DEC 2000)

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means
 - (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and
 - (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.
- (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

- (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

- (1) The Government shall have:
 - (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
 - (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;
 - (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
 - (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of

this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

- (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and
- (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

- (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

- (2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.
- (d) Subcontracting.
 - (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.
 - (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
 - (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

- (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.
- (e) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No.----- with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

- (f) Rights in Restricted Computer Software.
 - (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy Contract No.----- . It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- (b) This computer software may be:
 - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 - (3) Reproduced for safekeeping (archives) or backup purposes;

- (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
- (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No.----- with (name of Contractor).

(End of Notice)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

- (g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

I.44. DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002)

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.
- (c)
 - (1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed \$100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.
 - (2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed \$100,000.
 - (3) Omission of an authorization and consent clause from any subcontract, including those valued less than \$100,000 does not affect this authorization and consent.

I.45. DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

- (a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor

pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

- (c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed \$100,000.

I.46. DEAR 970.5227-6 PATENT INDEMNITY-SUBCONTRACTS (DEC 2000)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

I.47. DEAR 970.5227-8 REFUND OF ROYALTIES (DEC 2000) (DEVIATION)

- (a) The contract price includes certain amounts for royalties, payable by the Contractor or subcontractors or both, reported to the Contracting Officer in accordance with the Royalty Information provision of the solicitation.
- (b) During performance of this contract, if any additional royalty payments are proposed to be charged to the Government as costs under the contract that were not included in the original contract price, the Contractor agrees to submit for approval of the Contracting Officer prior to the execution of any licensing agreement the following information relating to each separate item of royalty or license fee:
 - (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price of contract item;

- (7) Number of units; and
 - (8) Total dollar amount of royalties.
 - (9) In addition, if specifically requested by the Contracting Officer, the contractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.
- (c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or subcontracts, or the copying of such data or data that is copyrighted.
- (d) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder.
- (e) The Contractor is compensated for any royalties reported under paragraph (b) of this clause only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract.
- (f) The Contracting Officer shall reduce the contract price to the extent any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract. The Contractor agrees to repay or credit the Government accordingly, as the Contracting Officer directs. Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to, a patent or the proprietary nature of data pursuant to which DOE makes a royalty or other payment.
- (g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (f) of this clause, the Contractor shall promptly notify the Contracting Office of that fact and shall promptly reimburse the Government in a corresponding amount.
- (h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at

any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

I.48. DEAR 970.5227-11 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000)

(a) Definitions.

- (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
- (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.
- (3) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (*7 U.S.C. 2321*, et seq.).
- (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) Patent Counsel means DOE Patent Counsel assisting the contracting activity.
- (6) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (7) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, *7 U.S.C. 2401(d)*) shall also occur during the period of contract performance.

(b) Allocation of Principal Rights.

- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(2) of this clause or by a request for

foreign patent rights in accordance with subparagraph (d)(2) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

- (2) Greater rights determinations. The Contractor, or an Contractor employee-inventor after consultation with the Contractor and with the written authorization of the Contractor in accordance with DOE patent waiver regulations, may request greater rights, including title, in an identified subject invention than the nonexclusive license and the foreign patent rights provided for in paragraph (d) of this clause, in accordance with the DOE patent waiver regulations. Such a request shall be submitted in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE in accordance with subparagraph (c)(2) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor or Contractor employee-inventor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor pursuant to a determination of greater rights are subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency), and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(c) Subject Invention Disclosures.

- (1) Contractor procedures for reporting subject inventions to Contractor personnel. Subject inventions shall be reported to Contractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. Accordingly, the Contractor shall establish and maintain effective procedures for ensuring such prompt identification and timely disclosure of subject inventions to Contractor personnel responsible for patent matters, and the procedures shall include the maintenance of laboratory notebooks, or equivalent records, and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and the maintenance of records demonstrating compliance with such procedures. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

- (2) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with subparagraph (c)(1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:
- (i) the contract number under which the subject invention was made;
 - (ii) the inventor(s) of the subject invention;
 - (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
 - (iv) the date and identification of any publication, on sale or public use of the invention;
 - (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
 - (vi) a statement indicating whether the subject invention concerns exceptional circumstances pursuant to *35 U.S.C. 202(ii)*, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
 - (vii) all sources of funding by Budget and Resources (B&R) code; and
 - (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements. Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of *42 U.S.C. 5908*.

- (3) Publication after disclosure. After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor.
 - (4) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
 - (5) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.
 - (6) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR 401.13.
- (d) Minimum Rights of the Contractor.
- (1) Contractor License.
 - (i) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor.

If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

- (ii) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine the Contractor's license is non-transferrable, on a case-by-case basis.
 - (iii) Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensee, or its domestic subsidiaries or affiliates achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.
 - (iv) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE licensing regulations.
- (2) Contractor's right to request foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to a nonexclusive, nontransferable,

irrevocable, paid-up license to the Government to practice or have practiced the subject invention in the foreign country, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee. Such a request shall be submitted in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this clause, with a copy to the DOE Contracting Officer, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request, and may consider whether granting the Contractor's request best serves the interests of the United States.

(e) Examination of Records Relating to Inventions.

- (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
- (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.
- (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(f) Subcontracts.

- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
- (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties in all

subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202(a)(ii).

- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work.
 - (4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.
 - (5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
 - (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.
 - (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.
- (g) Atomic Energy.
- (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be

asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

- (2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (g)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.
- (h) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent interests of DOE or the Contractor.
- (i) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.
- (j) Reports.
 - (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (c)(1) and (c)(5) of this clause.
 - (2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.
- (k) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the

Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility

- (1) to practice or have practiced by or for the Government at the facility, and
- (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(l) **Classified Inventions.**

- (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.
- (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
- (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(m) **Patent Functions.** Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

- (n) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

I.49. DEAR 970.5228-1 INSURANCE-LITIGATION AND CLAIMS (MAR 2002)

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (c)
 - (1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.
 - (2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
 - (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.
- (d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

- (e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed-
 - (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
 - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, "Obligation of Funds."
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-
 - (1) Which are otherwise unallowable by law or the provisions of this contract; or
 - (2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.
- (h) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's-
 - (1) Willful misconduct,
 - (2) Lack of good faith, or
 - (3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to

act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

- (i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.
- (j)
 - (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.
 - (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.
 - (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.
 - (4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245-1.
- (k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-
 - (1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
 - (2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the

amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

- (3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

I.50. DEAR 970.5229-1 STATE AND LOCAL TAXES (DEC 2000)

- (a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the contracting officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.
- (b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

- (c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

I.51. DEAR 970.5231-4 PRE-EXISTING CONDITIONS (DEC 2000)

- (a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on February 12, 2001. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to February 12, 2001, the contractor shall be responsible in accordance with the terms and conditions of this contract.
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

I.52. DEAR 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)

- (a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.
- (b) The contractor shall be afforded a reasonable opportunity to respond in writing.

I.53. DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) – ALTERNATES I AND III (DEC 2000) (MODIFIED)

- (a) Installments of fixed-fee. The fixed-fee payable under this contract shall become due and payable upon completion of the specific performance based incentives defined in Section B of this contract. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

- (b) **Payments on Account of Allowable Costs.** The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.
- (c) **Special financial institution account-use.** All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix-B. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.
- (d) **Title to funds advanced.** Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (e) **Financial settlement.** The Government shall promptly pay to the contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the contracting officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:

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- (1) Compliance by the contractor with DOE's patent clearance requirements, and
- (2) The furnishing by the contractor of:
 - (i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
 - (ii) A closing financial statement;
 - (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
 - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:
 - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;
 - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause--, DEAR 970.5228-1, "Insurance-Litigation and Claims");
 - (C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and

- (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
- (3) In arriving at the amount due the contractor under this clause, there shall be deducted,
 - (i) Any claim which the Government may have against the contractor in connection with this contract, and
 - (ii) Deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.
- (f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.
- (g) Discounts. The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the contracting officer finds that action is not in the best interest of the Government.
- (h) Collections. All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.
- (i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the contracting officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefor.
- (j) Determining allowable costs. The contracting officer shall determine allowable costs in accordance with the Federal **Acquisition Regulation** subpart 31.2 and the Department of Energy **Acquisition Regulation** subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

- (k) Review and approval of costs incurred. The contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (*41 U.S.C. 256*), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

I.54. DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (JUN 2007)

- (a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause I.30, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.
- (d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting

documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause I.30, Access to and ownership of records, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

- (e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
 - (2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 - (3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

- (i) Internal audit. The contractor agrees to design and maintain an internal audit plan and an internal audit organization.
 - (1) Upon contract award, the exercise of any contract option, or the extension of the contract, the contractor must submit to the contracting officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe:
 - (i) The internal audit organization's placement within the contractor's organization and its reporting requirements;
 - (ii) The audit organization's size and the experience and educational standards of its staff;
 - (iii) The audit organization's relationship to the corporate entities of the contractor;
 - (iv) The standards to be used in conducting the internal audits;
 - (v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;
 - (vi) The intended use of external audit resources;
 - (vii) The plan for audit of subcontracts, both pre-award and post-award; and
 - (viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE contracting officer.
 - (2) By each January 31 of the contract performance period, the contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.
 - (3) By each June 30 of the contract performance period, the contractor must submit to the contracting officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.
 - (4) The contracting officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

- (j) Remedies. If at any time during contract performance, the contracting officer determines that unallowable costs were claimed by the contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the contracting officer may, in his or her sole discretion, require the contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the contracting officer, where he or she deems it appropriate, may: Impose a penalty under 970.5242-1, Penalties for unallowable costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

I.55. DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000)

- (a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is-- dollars (\$--). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.
- (b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:
 - (1) collections accruing to the contractor in connection with the work under this contract and processed and accounted for in accordance with

applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

- (2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.
- (c) Notices-Contractor excused from further performance. The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be received and available during the 90 day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only 90 days and to cover the contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid and any negotiated fixed amounts, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.
- (d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees
 - (1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,
 - (2) to comply with other requirements of such plans and directives, and
 - (3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

- (e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

I.56. DEAR 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)

- (a) The contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.
- (b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

I.57. DEAR 970.5232-6 WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000)

Any uncollectible receivables resulting from the contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the contractor, and the United States Government shall have no liability to the contractor for the contractor's uncollected receivables. The contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE directives clause of this contract and such advance cannot be obtained. The contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable work to be performed by the contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE directives clause of this contract have elapsed. The contractor's utilization of contractor corporate funds does not relieve the contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

I.58. DEAR 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000)

The contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

I.59. DEAR 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000)

Integrated accounting procedures are required for use under this contract. The contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract.

I.60. DEAR 970.5235-1 FEDERALLY FUNDED R&D CENTERS (DEC 2000)

- (a) Pursuant to 48 CFR 35.017-1, this contract constitutes the sponsoring agreement between the Department of Energy and the contractor, which establishes the relationship for the operation of a Department of Energy sponsored Federally Funded Research and Development Center (FFRDC).
- (b) In the operation of this FFRDC, the contractor may be provided access beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities needed to discharge its responsibilities efficiently and effectively. Because of this special relationship, it is essential that the FFRDC be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to the Department of Energy.
- (c) Unless otherwise provided by the contract, the contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements

and limitations of DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work) (see current version).

- (d) As an FFRDC, the contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted activities is contained in DOE Order 481.1.

I.61. DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

I.62. REMOVED AND RESERVED

I.63. DEAR 970.5243-1 CHANGES (DEC 2000)

- (a) Changes and adjustment of fee. The contracting officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the contracting officer, if it is determined that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."
- (b) Work to continue. Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

I.64. DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (MAY 2006)

- (a) General. The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR 970.44. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.4401-1. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. DOE will conduct periodic appraisals of the contractor's management of all facets of the purchasing function, including the contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the contracting officer, through the contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.
- (b) Acquisition of utility services. Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.
- (c) Acquisition of Real Property. Real property shall be acquired in accordance with 48 CFR Subpart 917.74.
- (d) Advance Notice of Proposed Subcontract Awards. Advance notice shall be provided in accordance with 48 CFR 970.4401-3.
- (e) Audit of Subcontractors.
 - (1) The contractor shall provide for:
 - (i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and
 - (ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.
 - (2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The contractor shall provide, in appropriate cases, for the

timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.

- (3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.
 - (4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 970.3102-3-21(b).
- (f) Bonds and Insurance.
- (1) The contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of \$100,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.
 - (2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).
 - (3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than \$25,000, but not greater than \$100,000, the contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.
 - (4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required

underwriting capacity that appears on the list of acceptable corporate sureties.

- (g) Buy American. The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-3 and 48 CFR 52.225-5. The contractor shall forward determinations of nonavailability of individual items to the DOE contracting officer for approval. Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items valued at \$100,000 or less.
- (h) Construction and Architect-Engineer Subcontracts.
 - (1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
 - (2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."
 - (3) Prevention of Conflict of Interest.
 - (i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.
 - (ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
 - (iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.
- (i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.
- (j) Contractor-Subcontractor Relationship. The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor

of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

- (k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR Part 45, 48 CFR 945, the Federal Property Management Regulations 41 CFR Chapter 101, the DOE Property Management Regulations 41 CFR Chapter 109, and their contracts.
- (l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.
- (m) Leasing of Motor Vehicles. Contractors shall comply with 48 CFR 8.11 and 48 CFR 908.11.
- (n) [Removed and Reserved.]
- (o) Management, Acquisition and Use of Information Resources. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.
- (p) Priorities, Allocations and Allotments. Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.
- (q) Purchase of Special Items. Purchase of the following items shall be in accordance with the following provisions of 48 CFR 908.71 and the Federal Property Management Regulations, 41 CFR Chapter 101:
 - (1) Motor vehicles-48 CFR 908.7101
 - (2) Aircraft-48 CFR 908.7102
 - (3) Security Cabinets-48 CFR 908.7106
 - (4) Alcohol-48 CFR 908.7107
 - (5) Helium-48 CFR 908.7108
 - (6) Fuels and packaged petroleum products-48 CFR 908.7109
 - (7) Coal-48 CFR 908.7110
 - (8) Arms and Ammunition-48 CFR 908.7111

- (9) Heavy Water-48 CFR 908.7121(a)
- (10) Precious Metals-48 CFR 908.7121(b)
- (11) Lithium-48 CFR 908.7121(c)
- (12) Products and services of the blind and severely handicapped-41 CFR 101-26.701
- (13) Products made in Federal penal and correctional institutions-41 CFR 101-26.702
- (r) Purchase vs. Lease Determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:
 - (1) at time of original acquisition;
 - (2) when lease renewals are being considered; and
 - (3) at other times as circumstances warrant.
- (s) Quality Assurance. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.
- (t) Setoff of Assigned Subcontractor Proceeds. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.
- (u) Strategic and Critical Materials. The contractor may use strategic and critical materials in the National Defense Stockpile.
- (v) Termination. When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR Subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR Subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.
- (w) Unclassified Controlled Nuclear Information. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

- (x) Subcontract Flowdown Requirements. In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the contractor shall include the following clauses in subcontracts, as applicable:
 - (1) Davis-Bacon clauses prescribed in 48 CFR 22.407.
 - (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
 - (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
 - (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
 - (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
 - (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).
- (y) Legal Services. Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

I.65. DEAR 970.5245-1 PROPERTY (DEC 2000)

- (a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.
- (b) Title to property. Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon
 - (1) issuance for use of such property in the performance of this contract, or
 - (2) commencement of processing or use of such property in the performance of this contract, or
 - (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under

this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

- (c) Identification. To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.
- (d) Disposition. The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the contracting officer and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the contracting officer, of all government property which had come into the possession or custody of the contractor under this contract.
- (e) Protection of government property-management of high-risk property and classified materials.
 - (1) The contractor shall take all reasonable precautions, and such other actions as may be directed by the contracting officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the contractor's possession or custody.
 - (2) In addition, the contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

- (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.
- (f) Risk of loss of Government property.
 - (1) (i) The contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
 - (A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;
 - (B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting officer to safeguard such property under paragraph (e) of this clause; or
 - (C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.
 - (ii) If, after an initial review of the facts, the contracting officer informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the government for the loss, destruction, or damage.
- (2) In the event that the contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the contractor's compensation to the Government shall be determined as follows:
 - (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the

damaged property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

- (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.
- (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.
- (g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the contractor with a value above the threshold set out in the contractor's approved property management system, the contractor:
 - (1) Shall immediately inform the contracting officer of the occasion and extent thereof,
 - (2) Shall take all reasonable steps to protect the property remaining, and
 - (3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the contracting officer. The contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.
- (h) Government property for Government use only. Government property shall be used only for the performance of this contract.
- (i) Property Management.
 - (1) Property Management System.
 - (i) The contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The contractor's property management system shall be

submitted to the contracting officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the contracting officer may from time to time prescribe.

- (ii) In order for a property management system to be approved, it must provide for:
 - (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
 - (B) Employee personal responsibility and accountability for Government-owned property;
 - (C) Full integration with the contractor's other administrative and financial systems; and
 - (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
- (iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory.

- (i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.
 - (ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
- (j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

- (1) All or substantially all of the contractor's business; or
 - (2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this contract; or
 - (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
 - (5) A separate and discrete major task or operation in connection with the performance of this contract.
- (k) The contractor shall include this clause in all cost reimbursable subcontracts.

I.66. FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003) – ALTERNATE I (AUG 2003) as modified by DOE Acquisition Letter 2008-05

- (a) Definitions. As used in this clause--
- “Priority chemical” means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Implementing Instruction VIII of Executive Order 13423 of April 21, 2000, Greening the Government through Leadership in Environmental Management.
- “Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.
- (b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (c) The Contractor shall provide all information needed by the Federal facility to comply with the following:
- (1) The emergency planning reporting requirements of section 302 of EPCRA.
 - (2) The emergency notice requirements of section 304 of EPCRA.
 - (3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.

- (4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.
- (5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.
- (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Implementing Instruction VIII of Executive Order 13423.
- (7) The environmental management system as described in section 3(b) of Executive Order 13423.

I.67. DEAR 952.204-77 COMPUTER SECURITY (AUG 2006)

- (a) Definitions.
 - (1) Computer means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.
 - (2) Individual means a DOE contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.
- (b) Access to DOE computers. A contractor shall not allow an individual to have access to information on a DOE computer unless:
 - (1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and,
 - (2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.
- (c) No expectation of privacy. Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

- (d) Written records. The contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.
- (e) Subcontracts. The contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

I.68. DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005)

- (a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) *Definitions.* The definitions set out in the Act shall apply to this clause.
- (c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.
- (d)
 - (1) *Indemnification.* To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
 - (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in

connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

- (e) (1) *Waiver of Defenses.* In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
 - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
 - 1. Negligence;
 - 2. Contributory negligence;
 - 3. Assumption of risk; or
 - 4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (B) Any issue or defense as to charitable or governmental immunity; and
 - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his

injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

- (v) The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
 - (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:
- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

- (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) *Notification and litigation of claims.* The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes,

executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

- (i) *Civil penalties.* The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.
- (j) *Criminal penalties.* Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) *Inclusion in subcontracts.* The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.
- (l) *Effective Date.* This contract was in effect prior to August 8, 2005 and contains the clause at DEAR 952.250-70 (JUNE 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

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I. INTRODUCTION

This Personnel Appendix sets forth certain allowable costs by advance understanding for the Contractor human resource management policies and related expenses, which have cost implications under the contract. This cost understanding is subject to all applicable provisions of the contract and Department of Energy (DOE) Order 350.1.

The Contractor shall select, manage, and direct the work force and apply its human resource policies in general conformity with its private operations and /or standard industrial practice insofar as they are not inconsistent with this Contract. The Contractor shall use effective management review procedures and internal controls to assure that the cost limitations set forth herein are not exceeded, and that areas which require prior approval of the DOE Contracting Officer are reviewed and approved prior to incurring costs.

Either party may request that this Personnel Appendix be revised and the parties hereto agree to give consideration in good faith to any such request. Revisions to the Personnel Appendix shall be accomplished by executing Reimbursement Authorization in accordance with DEAR 970.3102-05-6. When revisions to this Appendix are approved, they will bear the effective date of such changes and the Reimbursement Authorization number in the upper right-hand corner of each page. Periodically as determined by the Contracting Officer, a complete revision to the Personnel Appendix will be published and incorporated by contract modification.

This Appendix A is adopted for the exclusive benefit and convenience of the parties hereto, and nothing herein contained will be construed as conferring any right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. Accordingly, neither this Appendix A nor any part thereof, as amended or modified, will be deemed to constitute a contract between a party hereto and any employee of the contractor or to be consideration for, or an inducement or condition of, the employment of any person, or to afford the basis for any claim or right of action whatsoever against a party hereto by any employee of the contractor or other third party.

The Contractor shall promptly furnish all reports and information required or otherwise indicated in this Appendix to the Contracting Officer.

II. DEFINITIONS

For clarity and consistency of meaning and intent, the following terms are defined for use in this Appendix.

Accredited Service The continuous period of time during which an employee is engaged in any of the Contractor's operations, is eligible for Company benefits, and is in an active pay status, or is in approved leave of absence status without pay.

Under the Contractor's Health & Welfare and Leave Programs, the employee will be given credit for prior service within the limitations listed below:

Accredited service will be determined by the following methods:

Transitioning TRW and Yucca Mountain Project sub-contractor employees who transition to BSC at contract change-over: current company recognized service date.

BECHTEL and SAIC transferring employees: current company recognized service date.

Future hires: New hire date and/or adjusted Bechtel and/or SAIC service date, if applicable.

BSC Rehires: Prior BSC employees rehired within three years will be eligible for adjusted service credit.

Adjustment is a change in salary required to establish either internal or external equity.

Bargaining Unit Employees (Union Employees) Employees whose wages, hours of work and working conditions have been negotiated into labor contracts. Terms defining represented or union employees are further identified in the individual collective bargaining agreements.

Base Pay, Base Pay Rate and Base Hourly Rate Rate of pay per hour, per week, or per month, exclusive of any premium, but including any cost of living allowances (COLAs) established in any bargaining unit agreements established for each job classification in accordance with the approved wage and salary schedules.

Basic Workweek – Non Bargaining Employees - A 40-hour workweek. It may consist of five 8-hour days or a compressed work week schedule.

Bonus/Incentive (Employee) A reward, financial or otherwise, that compensates the worker(s) for high and/or continued performance above standards. An incentive also is a motivating influence to induce accomplishment or performance above normal.

BSC Bechtel SAIC Company, LLC, the Contractor.

Casual Overtime (a) Work in excess of the basic work week which is not scheduled in advance, or (b) regularly scheduled work in excess of 40 hours for a period of less than four consecutive weeks. Casual overtime is not reimbursed for grades 25-32.

CFR Code of Federal Regulations.

Compensation Increase Plan (CIP) A plan for establishing need and specifying distribution of compensation, described in terms of maximum dollar amounts and/or percentage of base payroll on an annualized basis to be allocated to employee groups for base pay increases or lump sum payments during a pay year. The amounts approved are for granting merit, promotion, adjustment/equity increases and bonuses.

Compressed Work Week Schedule A work schedule designed to allow employees to complete a 40 hour work week in fewer than 5 days by increasing the number of hours worked per day. A compressed work week may be expressed as a 4/40 (four work days normally consisting of 10 hours each to total 40 hours worked in a one-week period resulting in three days off during each

work week) or a 9/80 (nine work days totaling 80 hours worked in a two-week period resulting in an alternating schedule of two consecutive days off and three consecutive days off).

Contracting Officer Refers to DOE Contracting Officer.

Contractor Refers to Bechtel SAIC Company, LLC (BSC). The responsibilities and authorities specified in this Appendix for the "Contractor" shall be exercised by the general manager of BSC or his authorized representatives.

DOE Refers to the U.S. Department of Energy, Office of Civilian Radioactive Waste Management.

Employee A person hired by and working for the Contractor. All employees are employed at will and this employment relationship can be ended with or without cause at any time by either the employee or the Contractor.

Employee Assistance Program A program of crisis intervention, assessment, referral, counseling, consultation and educational services concerning illegal drug use and other medical, mental, emotional, or personal problems of employees, particularly those which adversely affect behavior and job performance.

Employment Status

Full Time Employee Employment status of an employee regularly scheduled to work 40 hours per week.

Part Time Employee Employment status of an employee regularly scheduled to work less than 40 hours per week. Employees in this status are considered nonexempt for overtime purposes.

Temporary Employee An employee who is hired for a specified period of time. This employee may work full time or part-time and is eligible for legally required benefits only. All hours worked will be compensated as non-exempt.

Casual Employee An employee hired to work on a temporary basis or for a limited period of time not to exceed 1000 hours in a calendar year. Casual employees are paid on an hourly basis and receive legally required benefits only. Employment is offered with no expectation of continued employment. Casual employees may be called to work as needed and may work as many hours per week as necessary. All hours worked will be compensated as non-exempt.

Exempt (E) Employees Executive, administrative, and professional employees who are exempt from certain provisions of the Fair Labor Standards Act. They are in the Contractor's Salary Grades 28-32 and are not typically paid overtime.

Exempt Straight Time (EST) Employees Executive, administrative, and professional employees in Contractor's Salary Grades 25-27 are paid overtime at their straight time rate for all hours in excess of 40 hours in a workweek for extended work week hours that are scheduled and approved in advance.

Exempt Premium Overtime (EPO) Employees Executive, administrative, and professional employees in Contractor's Salary Grades 21-24 are paid overtime at one and one-half times their regular rate for all hours worked in excess of 40 hours in a workweek.

Extended Work Week A work week schedule of more than 40 hours per week which is expected to continue for four or more consecutive weeks.

Merit Increase is an increase in the salary of an employee based on prior performance within the established rate range of the job classification which is granted consistent with the Compensation Increase Plan (CIP).

Nonexempt (NEX) Non Bargaining Employees Employees who are subject to the minimum wage and overtime pay provisions of the Fair Labor Standards Act and who are not covered by a collective bargaining agreement.

Overtime Pay Payment for hours worked in excess of 40 hours within a regularly scheduled work week or for time worked on a holiday day.

Paid Time Off Time that will accrue as a benefit to the employee which may be used for vacation, religious observance, illness, or other need for personal time off from work. Time accrues in accordance with an increasing schedule for additional years of service.

Payroll Day A 24-hour period for purposes of determining pay.

Work Week Seven consecutive days (168 hours) typically extending from midshift Friday through midshift Friday.

Regular Employee An non-bargaining employee who is regularly scheduled to work more than 20 hours per week who is hired for an unspecified period of time.

Regular Rate The straight-time pay rate.

Regularly Scheduled Shift The normal hours of working time in each payroll day established for each employee.

Salary Range The range of pay rates, from minimum to maximum, set for a pay grade or job classification.

Straight-time Pay or Straight-time Earnings Amount obtained by multiplying the number of units of time worked by the straight-time rate per unit of time.

Straight-time Rate The rate of pay per hour, per week, or per month obtained by adding the applicable shift differential rate to the basic rate for the job classification assigned at the time the work is performed.

Substance Abuse A health problem characterized by the use of a drug, alcohol or other substances in a manner or to a degree that violates the law, interferes with a person's health, interpersonal relations, or work performance.

Termination End of employee relationship because of resignation, discharge, layoff, retirement, death, and/or removal from the payroll because of disability (not including disability absence where the employee is not removed from the payroll).

III. COMPENSATION

The contractor compensation program is governed by DOE Order 350.1 and all costs are allowable.

A. PAY POLICIES

1. **Bargaining Unit Employee Compensation**
The terms and conditions set forth in collective bargaining agreements (CBAs) and modifications thereto and established practices thereunder between the Contractor and recognized bargaining agents for its employees assigned to work under this contract (which involve expenditure of funds) constitute the allowable costs for bargaining unit members' compensation and benefits for reimbursement by DOE.
2. **Compensation - Non-Bargaining**
The objective of the compensation program is to provide a level of compensation which, within available funds, attracts, motivates and retains a competent workforce, maintains a competitive position to the labor markets in which the organization competes, reflects the worth of each position to the organization, and relates salary/wage increases to individual performance and position in salary range.
3. **Compensation Increase Plan**

Ninety days prior to the proposed implementation, the Contractor shall submit to the Contracting Officer an actual Compensation Increase Plan (CIP) and Salary Ranges for approval. The CIP will be developed and justified in accordance with DOE order 350.1 and requirements of DOE.

The approved compensation increase fund is calculated as a percentage of the exempt and nonexempt payrolls at the end of the prior salary year (expressed as an annualized amount) and shall be the maximum allowed for granting increases for employees based on merit, adjustments/equity, promotions, and bonuses.

All increases and bonuses are charged to the CIP fund on an annualized basis. Once an individual's salary increase and/or bonus is charged to the fund, reuse of that amount, i.e., recovery, for any other purpose during the salary year is unallowable. If an individual terminates before receiving an increase or bonus the portion of the fund allocated for that increase may remain in the fund.

The dollar amount of the fund shall be subject to review and adjustment by the Contracting Officer upon a significant reduction in Contractor employment levels, as in a reduction-in-force.

4. Approval of Individual Compensation Actions

Contracting Officer approval is required prior to reimbursement for initial and proposed changes to base salary and bonuses paid by BSC for the key personnel as identified in the Contract. The Contractor shall provide supporting justification related to internal and external equity as well as individual performance for each initial compensation or change. The Contractor shall submit the Application for Contractor Compensation Approval form, DOE F3220.5, thirty days in advance of the proposed effective date of the action. If circumstances warrant a notice of shorter than 30 days, the Contractor may request special consideration by the Contracting Officer.

No DOE funds shall be used for an Individual Compensation Action for Key Personnel prior to Contracting Officer approval.

B. PREMIUM PAY

1. Overtime

Eligible employees will receive overtime pay for hours worked in excess of the basic workweek. All overtime hours worked are subject to federal, state, and local labor laws. Overtime will be controlled by functional managers who must authorize any overtime before it is worked. Overtime will be governed by DOE Order 350.1, the Contractor contract clause Schedule I, Section I.64, and DEAR provisions on overtime management.

Authorized paid absences (PTO, Disability Sick Leave, Holidays, etc.) taken during a work week will not be counted as time worked for purposes of computing overtime pay for the scheduled work day or work week.

a. Exempt Employees

(1) Employees in Grades 21 through 24 (EPO):
Employees in grades 21 through 24 will be paid one-and-one half times their base hourly rate for any hours worked in excess of 40 hours in a work week. If required to work on paid holidays, these employees will be paid one-and-one-half times their base hourly rate for hours worked on the holiday, in addition to base pay for the holiday. Time worked on a holiday will be counted in the computation of the 40-hour work week.

(2) Employees in Grades 25 through 27 (EST):
Employees in grades 25 through 27 may be paid overtime at their base pay rate when a significant amount

of time in excess of the regularly scheduled 40-hour work week is scheduled in advance, properly documented, and approved by the employee's immediate manager/supervisor in advance. This may apply when overtime is expected to continue for more than one week. Overtime pay will not be approved for casual overtime required to fulfill regular duties and responsibilities.

Employees in these grades who are required to work on a scheduled holiday will be paid at their base pay rate for all hours actually worked, in addition to the pay for the holiday. Time worked on a holiday will be counted in the computation of the 40-hour work week.

- (3) Employees in Grades 28 through 32 (E):
Employees in grades 28 to 32 are not typically paid overtime. Under unusual circumstances, employees may be paid overtime at the employee's base pay rate when a significant amount of overtime in excess of the regularly scheduled 40-hour work week is scheduled, properly documented—including appropriate justification for an exception—and approved by the General Manager in advance. An extended workweek is a workweek scheduled and established in excess of the basic workweek of 40 hours and for a period of not less than 4 consecutive weeks. Employees in salary grades 28-32 on an approved extended work week will be eligible for additional pay at straight time rates.

Normally employees in these grades who are required to work on a scheduled holiday do not receive pay for that work. However, they may receive pay at their base pay rate for hours actually worked in addition to the pay for the holiday when the above overtime approvals have been granted.

- b. Nonexempt Employees (NEX Letter grades B through H):
Nonexempt employees will be paid one-and-one half times their base hourly rate for any hours worked in excess of 40 hours in a work week. Any nonexempt employee who is required to work on a paid holiday will be paid one-and-one half times their base hourly rate for hours worked, in addition to the base pay for the holiday. Time worked on a holiday will be counted in the computation of the 40-hour work week.
- c. Overtime Pay—Training Programs (grades B through H and 21 through 24):
Attendance at lectures, meetings, training programs and similar activities outside the employee's regularly scheduled 40 hour work week will not be counted as time worked if all of the following criteria are met:
- (1) attendance is voluntary; and
 - (2) the course, lecture or meeting is not directly related to the employee's job; and
 - (3) the employee does not perform any productive work during attendance.
- If any one of these criteria is not met, the time must be paid, including applicable overtime.

When employees, on their own initiative, attend an independent school or college course after their scheduled work hours, the time is not hours

worked for overtime purposes even if the course is job-related and the Contractor refunds the tuition and/or program cost.

- d. **Overtime Pay For Casual and Temporary Employees:**
Casual and temporary employees will be paid one-and-one half times their base hourly rate for any hours worked in excess of 40 in the work week. Those who are required to work on holidays will be paid base pay only.
- e. **Overtime Pay for Bargaining Unit Employees:**
Overtime for bargaining unit employees is defined by the applicable labor contract.

C. REPORTING PAY AND PARTIAL SHIFT WORK

Employees in grades B-H may be paid one half their scheduled shift at base pay rates when they report for work on their assigned shift and are not put to work, except if no work is available by reason of inclement weather or other conditions beyond the control of the contractor, or if the employee is discharged for cause or voluntarily terminates.

If put to work for a portion of their assigned shift, employees in grades B-H may be paid a minimum of eight hours or a maximum of their regularly scheduled work day at their base pay rate, except if no work is available by reason of inclement weather or other conditions beyond the control of the contractor, or if the employee is discharged for cause or voluntarily terminates.

D. SUBSISTENCE ALLOWANCES

- 1. Eligible employees assigned to Las Vegas will receive \$5.00 for each day worked at Mercury or \$7.50 for each day worked at the YMP (the YMP Site is beyond Mercury). To be eligible for this subsistence payment, employees must either report to or return from work at the Site, on their own time or using other than government furnished transportation unless required to stay overnight.
- 2. Subsistence allowances may be paid to employees who are ordered to and do report to such job sites and for whom no work is provided.
- 3. Employee's from other BSC locations required to stay overnight in Las Vegas will be in official travel status and not eligible for subsistence allowance.
- 4. Non-bargaining employees who are required to work without a 12-hour break during a 24-hour period and who spend the night at the Site will receive \$10.00 per occasion meal allowance in addition to the above daily subsistence allowances.

E. EVACUATION PAY

- 1. An employee evacuated temporarily from the employee's assigned work site and for whom no work is provided, but whose services are further required in support of continuing operations, will be paid at his/her base hourly rate up to the employee's normal work day, for all hours not worked and which the employee would have normally worked had he/she not been evacuated.
- 2. If an employee in grades B-H is in an evacuation status and a work status on the same day, the employee will be paid his/her base hourly rate for a combination of the two statuses for a total not to exceed their scheduled hours on that day. The employee shall be paid for any overtime hours due at the employee's applicable overtime rate.

If the employee does not work on the employee's scheduled non-work day while in evacuation status, no payment will be made for that day.

F. EMERGENCY PAY

Employees may be granted emergency leave pay for up to one day when extraordinary circumstances beyond the control of the Contractor preclude normal operations. Leave in excess of one day requires General Manager approval. Examples of extraordinary events include: severe weather, building closures, national emergencies, or other events that may threaten the well being of employees.

G. CALL-IN PAY

Employees in grades B-H who are called in to work after having left their job site at the end of their regular shift to perform work before, but not continuous with, their regular shift may be provided a minimum of four hours' work and if no work is available, four hours' pay. Employees in grades B-H who are assigned to a compressed work week will be paid a minimum of half their normal daily work schedule. If the employee does not work on that day, the hours paid but not worked will be straight time, except on holidays when the applicable premium rate may be paid. Only hours worked will count towards computing overtime.

H. DEATH BENEFIT

1. In the event of the death of a regular employee, the Contractor will pay the surviving spouse or other designated beneficiary, or if there is no surviving spouse or other designated beneficiary, will pay the estate of the deceased, a lump sum amount not to exceed four weeks at the employee's then-current base or equivalent hourly rate as well as any earned and accrued paid-time off.
2. Upon the death of an employee while travelling on company business or on temporary duty assignment, the cost of preparation and transportation is allowable for the deceased employee, as is the cost of transportation for dependents and the personal effects of the deceased employee. This allowable cost will be from the place of travel assignment or temporary duty assignment to the place of the employee's permanent duty station or equivalent distance. Transportation of dependents is applicable providing the Contractor gave authorization for family members to accompany the employee on temporary duty assignment.
3. Those employees covered by a Collective Bargaining Agreement will receive a death benefit as stipulated in their Collective Bargaining Agreement.

I. REIMBURSEMENT FOR PROFESSIONAL FEES, DUES, LICENSES, AND MEMBERSHIPS

Annually, a plan will be submitted to the contracting Officer for approval that will include information on the anticipated Fees, Dues, Licenses and Memberships charged to the contract. Criteria for Reimbursement – Employees who obtain a professional license, certification or membership will be reimbursed, providing that they obtain prior approval from their immediate manager. Files on all approved expenditures will be maintained by the Contractor in such a manner as to be readily accessible for audit.

J. SHIFT DIFFERENTIAL

Second shift (beginning at or after 1:00pm through 8:59pm) employees receive a shift differential of 6% of the employee's basic hourly rate. Third shift (beginning at or after 9:00pm through 4:59am) employees receive a shift differential of 10% of the employee's base hourly rate.

1. Eligible employees will be paid the shift differential payment only for the day worked on other than an established daytime shift. The shift differential is not included in payment for paid absences such as PTO and holidays. Pay for such absences will be calculated on the base hourly rate.
2. Overtime pay on work days when employees receive shift differential pay will be calculated using base salary plus shift differential.

3. Shift differential pay is allowable as specified by the Collective Bargaining Agreements.
4. Shift changes. Employees in grades B-H who are assigned to a shift without being given 48 hours notice of assignment or shift change may be paid one and one half times their base pay rate for that portion of the newly scheduled shift which does not coincide with the hours of the employee's former shift during the first 48 hours of the new shift.

K. HAZARD PREMIUM
Reserved.

L. PAY FOR TIME NOT WORKED

1. Paid Time Off (PTO). PTO is provided to eligible employees to be used as they wish, e.g., for vacation, illness, personal reasons, or religious observance. With the exception of illness, PTO is to be scheduled in advance and mutually agreed upon by the supervisor and the employee after taking work requirements into consideration. PTO accrues each pay period and may be used as accrued. Managers are authorized to approve up to 40 hours advance of PTO if the employee does not have sufficient accrued to cover a vacation or other absence. The advance will be offset by future accrual or be withheld from the final pay of a terminating employee.
 - a. Regular employees accrue PTO each pay period by the schedule below and are eligible to use PTO as it accrues. No minimum length of service is required.

0<3 years:	128 hours (16 days)
3<5 years:	144 hours (18 days)
5<10 years:	160 hours (20 days)
10<20 years:	184 hours (23 days)
20+ years:	200 hours (25 days)
 - b. Part-time employees scheduled to work less than 40 hours per week accrue PTO on a prorated basis. Employees in casual status, temporary or those regularly scheduled to work less than 20 hours per week do not accrue PTO.
 - c. Employees will continue to accrue PTO during all paid absences.
 - d. Employees will not accrue PTO while in any unpaid employment status.
 - e. Use of PTO must be approved by supervisors authorized to sign time records. PTO may be used by employees in increments of one-half hour or more.
 - f. Approved holidays occurring during PTO will not be counted against PTO accounts.
 - g. Group insurance coverage will remain in force and premium payments will continue to be apportioned between employer and employee on the same basis as during active work time. Participation in the retirement savings plan will continue and contributions will be based on actual eligible earnings while on PTO.
 - h. An employee who is disabled may choose to use PTO, if no Disability Sick Leave is available, to supplement short-term or long-term disability benefits, or workers compensation payments to continue full salary replacement for as long as possible.
 - i. Upon termination or transfer to another Bechtel or SAIC affiliate the employee's unused PTO balance will be cashed out or transferred to the

receiving organization. The funds associated with this cash out or transfer are reimbursable under the contract.

M. DISABILITY SICK LEAVE ACCOUNT

1. Employees who transition to BSC as a result of the new contract, will be provided a one-time credit of Disability Sick Leave equivalent to the years of accredited service they bring with them per the transition policy for crediting service. This one-time credit will be placed in their Bechtel SAIC Company Disability Sick Leave. This one-time credit cannot exceed the maximum 175 hours allowed under the plan.
2. Employees who transfer in from Bechtel, SAIC or their affiliates will be credited with 35 hours per year of service up to 175 hours.
3. A contribution of 35 hours per year of service will be credited to each full-time regular employee's account on each anniversary of service, to a maximum of 175 hours. A prorated contribution will be made to this account for those employees who are scheduled to work 20-40 hours per week.
4. For BSC rehires with a break in service of 3 years or less, unused DSL account will be reinstated.
5. The Disability Sick Leave account is supplemental to other disability benefits. It will only be available to use if the short-term disability insurance carrier has approved the absence as qualifying for short-term disability.
6. Disability Sick Leave is not a vested benefit to which employees are entitled upon termination or reclassification from regular to casual status. Consequently, the DSL account will not be paid off upon termination, or reclassification.

N. NOTICE OF REDUCTION IN FORCE/LAYOFF

The Contractor shall provide 30 days notice to employees of impending Reduction in Force (RIF)/Layoff. RIF/layoffs of 10 or more employees in a four week period require Contracting Officer approval.

O. PAY IN LIEU OF NOTICE

1. RIF/Layoff
When the Contractor is unable to give advance notice to employees of an impending RIF/layoff, regular employees may be paid up to 30 days pay in lieu of notice in addition to severance pay that may be due. Contracting Officer approval is required. Pay in lieu of notice is not paid upon contract transition.
2. Pay in Lieu of Remaining on Duty After Resignation Notification
When an employee has submitted a resignation, the contractor may give the employee not more than 2 weeks pay in lieu of remaining on duty, with the prior approval of the General Manager.

P. SEVERANCE PAY – NON-BARGAINING EMPLOYEES

In the event of a Reduction in Force (RIF), the Contractor may pay one week base pay to all regular employees with less than one year of accredited service and one week's base pay per year of accredited service to employees with one or more years of service to a maximum of 15 weeks severance pay. Regular part time employees receive prorated severance benefits. (Employees must complete at least six months of accredited service in their final year of employment to receive one week's severance pay for that year.) For the purpose of severance, employees will not receive prior service credit with respect to any period of employment for which that employee previously received severance benefits from his or her prior employer or affiliates of that employer.

Employees who (1) are offered a transfer to another facility, subsidiary, or affiliate of the Contractor, (2) who are offered employment by a successor contractor, (3), who resign, or (4) who are discharged for cause, will not be eligible for severance pay.

Severance pay is not counted as pay or service in calculating retirement benefits.

IV. PAID LEAVE

A. HOLIDAYS

1. Eligible employees will be granted 96 hours of paid holidays each calendar year. Time off with pay is provided at the base pay rate for each of the following holidays:

New Years Day
Presidents' Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Day
Four (4) Floating Holidays to be used in conjunction with the
Christmas/NewYears shut down

2. When recognized holidays fall on a Saturday, the preceding Friday will be observed as the holiday. When recognized holidays fall on a Sunday the following Monday will be observed as the holiday.
3. To be eligible for holiday pay, the employee must be in paid status on the workday either preceding or following the holiday. No pay will be granted for a holiday which falls on the day preceding the date of employment, nor for a holiday which falls after the last day worked.
4. If a scheduled holiday occurs when an employee is on an approved paid absence (e.g., PTO, jury duty, etc), the employee is entitled to holiday pay and no charge is made against their PTO.

B. DEATH IN IMMEDIATE FAMILY

Time off with pay of up to three days may be allowed for an employee to attend the funeral of a member of the immediate family.

For the purpose of this policy, the immediate family includes children and spouse (or registered domestic partner), parents, grandparents, brother or sister of the employee or spouse, grandchild, mother-in-law, father-in-law, or legal guardian.

Additional time off with pay for travel outside the Continental United States of up to two days may be granted with the approval of the Manager.

C. MILITARY LEAVE

An employee may be granted leave with pay not to exceed 10 working days within a twelve month period to attend active training duty in the Armed Forces Reserve or the Coast Guard Reserve of the United States, the National Guard or the Air National Guard. Pay allowed for such leave will not exceed the difference between the employee's base pay for the period of leave and military pay excluding allowances for housing and subsistence. Employees who are called up for short-term National Guard duty or Reserve emergency duty may be paid up to 5 working days at their base pay rate to meet this commitment. If an employee is called to emergency duty, the contractor will pay up to ½ of the employee's base pay rate to the employee for up to 180 days of active duty. Unpaid leave of absence would apply for the period beyond 180 days.

D. JURY/WITNESS DUTY

Employees who have been called to be selected or to serve on a jury impaneled by a civil authority are authorized time off with pay. Payment shall be the difference between the employee's base pay and any fees provided by the court, excluding travel allowance. An employee who has been subpoenaed to testify as a witness in legal proceedings, other than one in which the employee is a party to the suit, may be authorized time off with full pay. Verification of an employee's attendance at court is required.

E. VOTING TIME

To the extent consistent with, and not in violation of, applicable statutes, the Contractor may grant an employee time off with pay not to exceed (2) hours for the purpose of voting in a duly constituted governmental election. Employees must furnish satisfactory evidence of inability to vote outside regular hours and obtain General Manager approval.

F. WORKERS COMPENSATION

The Contractor may pay an employee "injury time" for absences from work as the result of a job-incurred injury or illness at 100 percent of base pay, unless/until the employee receives statutory workers compensation benefits. When the employee receives statutory workers compensation benefits, the Contractor may supplement these benefits with the "injury time" up to 75 percent of base pay, not to exceed six (6) months or 26 weeks for the date of injury. Once an employee qualifies for statutory workers compensation benefits, injury time paid at 100 percent will be adjusted retroactively to the 75 percent level as a supplement to the statutory benefit.

Employees may supplement statutory workers' compensation benefits, including "injury time," up to 100 percent of net pay with their Disability Sick Leave or PTO. The DSL account can be used on the first day of absence if the absence is the result of a work-related injury (as defined by applicable Workers Compensation regulations). In such cases, payments to the employee from the DSL account will be reduced by the amount of Workers Compensation benefits for which the employee is eligible, even if the employee fails to file a Workers Compensation claim.

V. UNPAID LEAVES OF ABSENCE

Leaves of absence without pay may be granted to regular employees for the reasons stated below. The employer payment of group insurance costs which continue in effect through the end of the month in which the unpaid leave of absence begins is an allowable cost. The Contractor will comply with any legal requirement to offer such leaves as well as internal policies and procedures related to eligibility, length of leave, benefit eligibility and premium payments.

A. PERSONAL LEAVE

Personal leave may be granted to regular employees. Group insurance coverage (COBRA) may continue if the employee elects to pay the premiums. Service credit accrues during personal leave. Retirement service credit does not accrue.

B. EDUCATIONAL LEAVE

Educational Leave may be granted to a regular employee to pursue higher education goals. Such leave may not exceed 2 years. Group insurance coverage (COBRA) may continue if the employee elects to pay the premiums. Service credit accrues up to a maximum of 2 years. Retirement service credit does not accrue.

C. CIVIC LEAVE

Civic leave may be granted to a regular employee to voluntarily serve in government activities, elected office, or appointed government positions. This leave may not exceed one year. Such leave may be extended with the prior approval of the Contracting Officer. Group insurance coverage (COBRA) may continue if the employee elects to pay the premiums. Service credit accrues for the authorized period of the leave. Retirement service credit does not accrue.

D. MILITARY SERVICE

Military leave without pay may be granted to regular employees who serve on active duty for an extended period of time with U.S. Armed Forces. This leave is normally for the

length of military service plus 90 days. Group insurance coverage (COBRA) may continue if the employee elects to pay the premiums. Service credit accrues normally, up to a maximum of five years. Retirement service credit does not accrue except as required by law.

Employees called to active military duty under presidential or congressional order, will receive up to one-half of their base pay rate for at least 180 days after their call to active duty. Employees may use earned and/or accrued PTO to extend this 180-day period. In no instance will Contractor payments of salaries or wages and pay received for active military duty exceed employee's base pay rate earned prior to the call to active duty. For these purposes, active duty pay includes base pay, all specialty pay, and all allowances except subsistence, travel, and uniform allowances. The cost for providing enrolled benefits for dependents for a period of 180 days will be allowable. Employees will continue to accrue credited service for pension during the 180-day period.

E. MEDICAL LEAVE AND FAMILY MEDICAL LEAVE

For leaves of 90 days or less, leaves for medical reasons, and leaves under the Federal Family and Medical Leave Act, insurance premium payments will continue to be apportioned between BSC and the employee on the same basis as during active work time. During medical leaves of more than 90 days group insurance coverage (COBRA) may continue if an employee elects to pay the premium. Service credit accrues for the authorized period of the leave. Retirement service credit does not accrue.

VI. BECHTEL SAIC COMPANY PERSONNEL LOANED TO OUTSIDE ORGANIZATIONS

With the prior approval of the Contracting Officer, the Contractor may temporarily assign Bechtel SAIC employees to locations and organizations other than their assigned organization. Such assignments may be to federal, state, and local government, non-profit organizations, private sector partners, or other customers. Such assignments will be in the best interest of the DOE and the Contractor. The term of these assignments will be determined to best meet the needs and obligations of the specific request but normally will be two years or less. Up to 100 percent of the cost of the assignment to the Contractor may be reimbursed. The terms and conditions of cost reimbursement will be spelled out in the approval letter.

The above provision does not apply to BSC employees loaned to other affiliate DOE contractors on an intermittent basis.

Employees on temporary assignment will remain employees of Bechtel SAIC Company, LLC.

VII. LABOR RELATIONS

The Contractor will respect the right of employees to organize, form, join or assist labor organizations, bargain collectively through representatives of the employees own choosing, and to engage in other concerted activities for the purpose of collective bargaining and also the right to refrain from such activities.

Costs of wages and fringe benefits to employees represented by collective bargaining units and all other costs and expenses incurred pursuant to the provisions of collective bargaining agreements and revisions thereto are allowable costs.

The Contractor shall meet with the Contracting Officer for the purpose of reviewing the Contractor's bargaining objectives prior to any negotiation concerning any collective bargaining agreement or revision.

The Contractor shall promptly advise the Contracting Officer of labor relations developments involving the Contractor and/or any sub-contractor on a government owned or operated site which appears likely to lead to a work stoppage or appears to involve: the National Labor Relations Board at any level; recourse to procedures under the Labor Management Relations Act of 1947, as amended, or other Federal or State labor law, or any grievance which reasonably may be expected to be referred to arbitration.

VIII. GROUP INSURANCE

Employer paid and optional plans have been approved by DOE and are governed by DOE Order 350.1.

A. LEGALLY REQUIRED BENEFITS

All legally required benefits, such as Old Age, Survivor's and Disability Insurance, Unemployment Compensation and Worker's Compensation and Employer's Liability Insurance, are allowable costs. Any major changes to the above requires the approval of the Contracting Officer.

All contractor regular employees who are regularly scheduled to work 20 hours or more per week are eligible to participate in BSC's benefits plan, as outlined below.

B. MEDICAL FACILITIES AND HEALTH SERVICES

1. The cost of providing periodic, and termination physical examinations and associated medical services to employees may be allowed under a plan approved by the Contracting Officer. The cost of associated medical services shall be limited to immunization, inoculation, and emergency treatment, except as otherwise approved by the Contracting Officer.
2. The reasonable costs of establishment and operation of job site medical facilities, air evacuation (military and civilian), and the reasonable costs of medical care with medical doctors on call twenty-four hours per day, seven days per week are allowable for employees. Services will be available when en route between established point of origin and the job site and while on official travel status or authorized leave.
3. Employees may be paid at their base pay rate for time spent during regular working hours in receiving the above medical and health services when furnished or required by the Contractor.
4. Personal protective equipment may be provided by the contractor at no cost to those employees exposed to possible health and safety hazards arising from operational requirement..

C. GROUP HEALTH AND WELFARE PROGRAMS

1. The employee benefit plans and related costs are approved by the Contracting Officer for application to employees working on this contract and are reimbursable. Annually, the Contractor will provide the Contracting Officer, with a detailed breakout of estimated plan costs and premiums for the upcoming plan year. In addition, any change in benefits or benefit plan design must be submitted to the Contracting Officer for approval at least 90 days prior to the implementation of such change.
2. Group health and welfare plans include the following: Medical (PPO and HMOs), Dental, Vision, Short-term Disability, Long-term Disability, Basic Accidental Death & Dismemberment Insurance, Voluntary Personal Accident Insurance, Basic Life Insurance, Supplemental Life Insurance, Dependent Life Insurance, Business Travel Accident Insurance, and Health Care and Dependent Care Flexible Spending Accounts. Details of these plans are included in the appropriate Summary Plan Description or insurance contract on file with the Contracting Officer.
3. Retiree medical continuation plans will be offered to eligible employees in accordance with plans on file with and approved by the Contracting Officer.

D. RETIREE MEDICAL BENEFITS

Employees pay the full cost of retiree medical, except for active TRW employees who transition to BSC on February 12, 2001 and who are age 50 or older on that date. These grandfathered employees will receive the subsidy available to them on that date based upon the formula in the TRW retiree medical plan on that date. The Contractor

contribution to the cost of the plan for former TRW employees eligible under the predecessor contract is based on years of service, but will never be more than the actual plan cost.

At time of contract expiration or termination, an actuarial calculation will be performed by the Contractor, valuing the liabilities of those retirees with DOE contract service. If the parties agree on a lump sum amount, the retiree liability can be settled by a lump sum payment to the Contractor thus dissolving this liability. If the parties cannot agree on an amount, two options may be implemented: 1) transfer liability to the replacement contractor or 2) implement the pay-as-you-go option that will continue until all liabilities are met or until a settlement can be reached, whichever occurs first.

IX. RETIREMENT PLANS

All retirement plans are governed by the requirements of DOE Order 350.1. Reports shall be provided to DOE within ten months following close of the plan year. The final accounting period shall end with the date of contract termination.

The Contracting Officer will be provided with a copy of the plan documents, summary plan descriptions, and other documents and policies used to administer the plans.

All plans will be administered in accordance with the plan documents, and IRS and DOL statutory regulations. All changes are subject to Contracting Officer approval.

A. Background

The contractor may sponsor three retirement plans: (1) a contractor-paid, noncontributory defined benefit pension plan for all former non-bargaining TRW employees transitioning to BSC on February 12, 2001, and (2) a partially matched non-bargaining 401(k) plan (which includes a discretionary contribution component that is available to all non-bargaining employees except those eligible to participate in the defined benefit pension plan), and (3) a bargaining unit 401(k) plan for the bargaining unit that has no company match (collectively "the Plans").

B. Funding

The DOE agrees to reimburse for the contract term the contractor retirement plan contributions on behalf of those contractor employees performing services pursuant to the prime contract.

1. Annual contributions to fund the defined benefit pension plan shall be limited by the greater of:
 - a. the minimum contribution required by Section 302 of the Employee Retirement Income Security Act (ERISA), or
 - b. the amount estimated to eliminate the unfunded current liability, if any, as projected to the end of the plan year. The term "unfunded current liability" shall refer to the unfunded current liability as defined Section 302(d)(8) of ERISA. Contributions above the minimum shall require approval by the Contracting Officer.
2. If this policy causes a temporary, technical inconsistency with the CAS, the Contractor shall immediately notify the cognizant Contracting Officer and Chief Financial Officer. The Contractor shall have recourse to the cost principles found at FAR 31.205-6(j) (1), (2) and (3) and shall avoid penalties on that basis.
3. Matching Contributions (4%) and Company Contributions (2-5% discretionary contribution component) by BSC to the non-bargaining 401(k) program will be allowable under the Contract.
4. If implemented, costs for administering the bargaining unit 401(k) program will be allowable under the Contract.

- C. Termination of the Retirement Plans
The Contractor shall not terminate the retirement plan(s) without the approval of the Contracting Officer.

The Contracting Officer shall be advised of any partial plan termination due to a reduction of employment as soon as practicable after the qualifying event.

If the Contracting Officer authorizes a total plan termination, the Contractor shall submit to the Contracting Officer a plan termination proposal that includes the amount estimated to satisfy all plan liabilities. The Contracting Officer shall provide written instructions to the Contractor after reviewing the proposal as to the approved plan of action. If the Contracting Officer instructs Contractor to terminate the Plans, plan assets and the return on those assets in excess of plan liabilities and termination costs shall revert to the DOE. In the event plan assets are insufficient to meet termination liabilities and costs, DOE shall authorize the Contractor to draw down under its Contract letter of credit the amount necessary to cover such liabilities and reasonable costs associated with plan termination actions.

1. In the event the Contract is terminated without a replacement contractor, the Contractor shall be responsible for termination of the Plans in accordance with the paragraph above.
2. If the operations at the Site continue but the Contract passes to a replacement Contractor who will become the sponsor of the Plans, the Plans' and their related assets and liabilities shall pass to the replacement Contractor. The incumbent Contractor shall assist the replacement Contractor in completing all legal documentation and transferring all required information.
3. The parties agree that any disposition of assets or liabilities upon contract termination or plan termination shall be consistent with applicable federal laws and shall be subject to such rulings and approvals from federal agencies as may be required by law or deemed prudent by Contractor or the DOE.
4. If either or both of the Plans incurs a federal excise tax resulting from any action or inaction of Contractor or its deputies or fiduciaries, Contractor shall pay such excise tax. If either or both of the Plans incurs a federal excise tax resulting from any action or inaction of DOE or its deputies, DOE shall pay such excise tax.

X. EMPLOYEE PROGRAMS

A. Recreation and Employee Morale

1. The Contractor may contribute to the recreational and morale-building program the sum of Twenty dollars (\$20.00) times the number of regular employees on the Contractor's payroll on April 1 and October 1 of each year. This includes activities such as participation in diversity events morale building programs and other programs consistent with the allowable cost clause of this contract. Contractor will submit a Recreation and Employee Morale Plan for approval by the Contracting Officer. Following approval of the overall plan, annual budgets will be submitted.
2. The Contractor is authorized to maintain established programs such as employee counseling and in-house employee publications.

B. Employee Recognition Awards

The Contractor will submit for Contracting Officer approval any employee recognition award programs such as Employee Recognition Program, Service Awards, Retirement Awards, Suggestion Awards, Invention Awards, etc.

C. Safety Programs

The cost of providing Safety Programs as required by the Department of Energy or approved by the Contracting Officer shall be allowed in connection with work performed under the Contract.

- D. Food Services, Housing, and Camp Facilities
The net cost to the Contractor of operating cafeterias, dining rooms, canteens, and providing food, housing, laundry services, custodial and janitorial services, and camp facilities in connection with the performance of work under this Contract, and such other services as may be required or approved by the Contracting Officer shall be allowable cost to the Contract.
- E. Substance Abuse Program
The Contractor shall maintain a Workplace Substance Abuse Program as required by DOE Order 350.1. This program will conform to 10CFR 707 and/or other Federal regulations applicable to this contract. It will be submitted to the Contracting Officer for approval of the program plans and budget.
- F. Employee Assistance Programs
The Contractor shall submit to the Contracting Officer for approval the program plans and budget for the following Employee Assistance Services: crises intervention, consultation, counseling and referral to address a range of medical, mental, emotional and personal problems of employees, particularly those that affect job performance.
- G. Telecommuting
The Contractor may offer telecommuting (working from an office other than Company offices) to selected employees. The program shall be subject to Contracting Officer approval.
- H. Employee Dispute Resolution
All non-bargaining employees shall participate in an Employee Dispute Resolution program which provides a means of resolving any employee employer disputes through a four step process. It will not preclude the use of the OCRWM concerns program, EEOC or the Human Rights Commission. The plan will be submitted to the Contracting Officer for approval. DOE accepts this program as one of the vehicles for employees to pursue concerns. All costs related to implementation of employee disputes resolution program are allowable.
- I. Community Programs
BSC shall actively involve the community in its programs and likewise will contribute to selected community programs for purposes of promoting the Yucca Mountain Project and programs. Costs for such involvement will be allowable cost to the contract.
- J. Commuting Benefits
Contractor may provide non-taxable commuting benefits as defined by IRS guidelines for transportation passes to employees working in the Washington, D.C. area, remaining consistent with DOE employees receiving commuting benefits in Washington, D.C.
- K. Employee Communications
The Contractor is authorized to develop and implement employee communication programs such as in-house employee publications, diversity awareness programs, and other employee awareness programs and training (e.g. ethics, time charging, sexual harassment training, etc.).

XI. TRAVEL, RELOCATION AND TEMPORARY ASSIGNMENT

- A. Travel, Relocation and Temporary Assignment
Policies and associated costs must be approved by the Contracting Officer. Such policies will be in accordance with the Federal Acquisition Regulations.
- B. Official Foreign Travel
The Contractor shall comply with DOE Order 551.1A, Official Foreign Travel, and OCRWM guidelines for approved travel (whether wholly or partly on official business), from the U.S. to a foreign country.

XII. RECRUITMENT

A. Recruiting Costs

The reasonable and necessary cost incurred for the recruitment of personnel will be allowed. Costs may include, but are not necessarily limited to, advertising in newspapers and technical journals, preparation of recruiting materials, and travel for recruiting personnel and technical representative.

B. State and Nonprofit (No-fee) Minority Agencies

The Contractor will, to the maximum extent feasible, utilize the services of the local State and nonprofit (no-fee) Minority Agencies in the recruiting of personnel and will provide those agencies with current listings of job openings for which outside recruiting is being conducted.

C. Other Recruiting Methods

The Contractor may utilize employment agencies or employment consultants in the recruiting of personnel and may travel to educational institutions, attend job fairs, or sponsor "Open Houses" in special recruitment areas and invite prospective employees whose skills are in short supply to the point of hire and/or permanent duty station for a pre-employment interview.

D. Physical Examinations

The reasonable costs of employment physical examinations for new hires, rehires, and employees returning to work after an absence of more than five days due to illness or injury, including substance abuse testing, are allowable.

E. Pre-employment Verification Standards

The reasonable cost of pre-employment personnel investigations are allowable under this Contract. All costs associated with the processing of a security clearance where the Contract requires the employee to have such clearance, are allowable under the Contract.

F. Cooperative Education Student Employment

1. The Contractor may implement a Cooperative Education Program (CEP) to recruit potential long-term technical, professional, or administrative employees.

2. The administration of Cooperative Education Student Employment will be in accordance with a plan filed with the Contracting Officer.

3. Travel and Relocation Allowances

Co-op employees whose Contractor work locations are more than 100 miles from their schools may be reimbursed for public transportation or automobile mileage for the most direct route. Reimbursement will not exceed the equivalent of least cost economy airfare. Enroute expenses and up to five days' settling-in expenses, up to the maximum per diem rate may be authorized upon arrival at the work location.

G. Summer Student Employment

Travel and relocation allowances for summer student employees may be paid in accordance with paragraph F.3, above.

XIII. TRAINING

A. Annual Training Plan

Annually, the Contractor shall submit their Fiscal Year Training Plan for Contracting Officer approval. This plan will include the Contractor's training requirements, objectives and estimated costs as established through a needs assessment process. Prior to this annual submittal, DOE will notify the Contractor of DOE OCRWM guidelines, established through requirements of DOE Order 350.1, applicable laws and directives.

B. Employee Education Tuition Assistance Program (EETAP)

1. Regular non-bargaining employees who are active or on medical/family leave on the course start date and through the completion of the course, are eligible.

2. Courses must be related to the employee's job duties or directly related to the mission of the contractor and DOE. In addition, these courses must be offered by an accredited school, college or institution.
3. The Contractor may reimburse for eligible costs, up to the amount of similar charges for courses provided by a local state-supported university, less financial assistance for other sources (grants, assistantships, fellowships, scholarships, VA assistance, etc.) when the employee achieves a grade of C or better, or "Pass" in a pass-fail course. Where essential training is not provided locally or where business-related schedule conflicts exist, the full amount of charges beyond the local state-supported university costs may be reimbursed on an exception basis. The Contractor may provide a maximum of \$4,000 per employee each fiscal year. The employee must furnish records of course completion and eligible costs incurred.
4. Eligible costs include in-state tuition, required textbooks, applicable state and local taxes and required direct charges billed by the institution for instruction, such as laboratory fees, initial registration fees, and health fees.
5. Ineligible costs include late charges, equipment, tools, general supplies, supplemental non-required textbooks, medical insurance, out-of-state tuition premiums (except under special circumstances), tuition for courses that are audited, and parking fees.

XIV. SUSPENSION OF ACCESS AUTHORIZATION

If the access authorization of an employee is suspended by direction of the Contracting Officer or Contractor, the Contractor shall transfer the employee to work not requiring access if such work is available. If a Contractor determines no work is available in an uncleared area to which the employee may be transferred, the Contractor shall prepare a written report for the concurrence of the Contracting Officer, setting forth the reasons for the determination. Subject to Contracting Officer concurrence with such determination, the Contractor shall place the employee on leave with pay at their base compensation until the employee is notified in writing of the Hearing Officer's recommendation. If the Hearing Officer recommends revocation of access authorization, the employee shall be placed on leave without pay. If the Hearing Officer recommends continuation of access authorization, payment of the base wage shall be continued until final disposition of the case under Departmental procedures, 10 CFR Part 710.

If the employee whose access authorization has been suspended is transferred to another position where such access authorization is not required, compensation shall, thereafter, be the base wage or salary received by the employee in the position from which transferred, and such compensation shall continue until the employee is notified in writing of the Hearing Officer's determination. If the Hearing Officer recommends revocation of access authorization, compensation will be adjusted to the rate applicable to the job being performed. If the Hearing Officer recommends continuation of access authorization, the base wage previously received shall be continued until final disposition of the case under Departmental procedures, 10 CFR Part 710. If at any stage of the access authorization procedure following a suspension, the employee's access authorization is reinstated and they return to work in the same or comparable position the employee shall be reimbursed for net loss of base earnings during the period of suspension.

If the access authorization of an employee is suspended by DOE, compensation will be allowable in accordance with the provision of DOE Order.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J – LIST OF ATTACHMENTS

APPENDIX D – KEY PERSONNEL

Pursuant to the Section I, Contract Clause DEAR 952.215-70, entitled, “Key Personnel,” the following positions are considered to be essential to work being performed.

Title	Name
General Manager	T. C. Feigenbaum
Deputy General Manager	”Vacant”
Environmental, Safety and Health Manager	M. T. Sullivan
Quality Assurance Manager	D. A. Taggart
Licensing & Nuclear Safety Manager	R. M. Kacich
Repository Project Management Manager	R. J. Tosetti
Project Controls Manager	R. S. Hajner
Business Systems Manager	K. D. Irwin
Quality & Performance Assurance Manager	C. D. Sorensen

Section Number:	J
Section Title:	PART III LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
Subsection Number:	APPENDIX E
Subsection Title:	LIST OF APPLICABLE DIRECTIVES (LIST B)

Pursuant to the Section I, Contract Clause DEAR 970 5204-2, entitled, "Laws, Regulations, and DOE Directives", the following list of DOE documents is applicable to this contract

NOTE: New or changed directives are in bold.

TABLE E.1 DIRECTIVES

Document ID	Change #	TITLE	Remarks
DOE O 110.3A CRD		CONFERENCE MANAGEMENT	
DOE O 130.1 CRD		BUDGET FORMULATION	
DOE O 142.1 CRD		CLASSIFIED VISITS INVOLVING FOREIGN NATIONALS	
DOE O 142.3 CRD	1	UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS PROGRAM	
DOE O 151.1C CRD		COMPREHENSIVE EMERGENCY MANAGEMENT SYSTEM	
DOE O 200.1 CRD		INFORMATION MANAGEMENT PROGRAM	
DOE O 205.1A CRD		DEPARTMENT OF ENERGY CYBER SECURITY MANAGEMENT PROGRAM	BCP/FCP #PMI-2008-002 status is pending.
DOE O 210.2 CRD		DOE CORPORATE OPERATING EXPERIENCE PROGRAM	
DOE O 221.1 CRD		REPORTING FRAUD, WASTE, AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL	
DOE O 221.2A CRD		COOPERATION WITH THE OFFICE OF INSPECTOR GENERAL	
DOE O 225.1A CRD		ACCIDENT INVESTIGATIONS	

TABLE E.1 DIRECTIVES

Document ID	Change #	TITLE	Remarks
DOE O 226.1A CRD		IMPLEMENTATION OF DEPARTMENT OF ENERGY OVERSIGHT POLICY	
DOE O 241.1A CRD	1	SCIENTIFIC AND TECHNICAL INFORMATION MANAGEMENT	
DOE O 243.2 CRD		VITAL RECORDS	BCPs YMP-2008-029 and YMP-2008-035 were cancelled 8/28/2008. These activities are not currently funded.
DOE O 252.1 CRD		TECHNICAL STANDARDS PROGRAM	
DOE O 350.1 CRD	1	CONTRACTOR HUMAN RESOURCE MANAGEMENT PROGRAMS	
DOE O 412.1A		WORK AUTHORIZATION SYSTEM	
DOE O 413.1A CRD		MANAGEMENT CONTROL PROGRAM	
DOE O 413.3A CRD		PROGRAM AND PROJECT MANAGEMENT FOR THE ACQUISITION OF CAPITAL ASSETS	CRD item 12 use DEAR 970.5223-1 <i>Integration of Environmental, Safety and Health into Work Planning and Execution.</i>
DOE O 414.1C CRD		QUALITY ASSURANCE	
DOE O 420.1A CRD		FACILITY SAFETY	
DOE O 430.1B CRD	1	REAL PROPERTY ASSET MANAGEMENT	
DOE O 430.2B CRD		DEPARTMENTAL ENERGY, RENEWABLE ENERGY AND TRANSPORTATION MANAGEMENT	Only to the extent defined in OCRWM unnumbered CO Letter dtd. 5/15/2008 from Spencer R. Peterson to Deborah J. Schlismann (CCU.20080515.0012).
DOE O 440.2B CRD	1	AVIATION MANAGEMENT AND SAFETY	CO Letter dtd. 3/21/2005 – Intent to Revise the Applicable Directives (List B) to Incorporate DOE Order 440.2B, Aviation Management and Safety (BSC Correspondence Log #0322055079)
DOE O 442.1A CRD		DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM	

TABLE E.1 DIRECTIVES

Document ID	Change #	TITLE	Remarks
DOE O 450.1 CRD	Administrative Change 1	ENVIRONMENTAL PROTECTION PROGRAM	
DOE O 460.1B CRD		PACKAGING AND TRANSPORTATION SAFETY	
DOE O 460.2A CRD		DEPARTMENTAL MATERIALS TRANSPORTATION AND PACKAGING MANAGEMENT	
DOE O 470.2B CRD		SECURITY AND EMERGENCY MANAGEMENT INDEPENDENT OVERSIGHT AND PERFORMANCE ASSURANCE PROGRAM	
DOE O 471.1A CRD		IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION	
DOE O 471.3 CRD		IDENTIFYING AND PROTECTING OFFICIAL USE ONLY INFORMATION	
DOE O 475.1 CRD		COUNTERINTELLIGENCE PROGRAM	
DOE O 534.1B CRD		ACCOUNTING	
DOE O 551.1B CRD		OFFICIAL FOREIGN TRAVEL	
DOE O 580.1 CRD		DEPARTMENT OF ENERGY PERSONAL PROPERTY MANAGEMENT PROGRAM	
DOE O 1220.1A	1	CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS	
DOE O 1230.2		AMERICAN INDIAN TRIBAL GOVERNMENT POLICY	
DOE O 1340.1B		MANAGEMENT OF PUBLIC COMMUNICATIONS PUBLICATIONS AND SCIENTIFIC TECHNICAL AND ENGINEERING PUBLICATIONS	
DOE O 1450.4		CONSENSUAL LISTENING-IN TO OR RECORDING TELEPHONE-RADIO CONVERSATIONS	
DOE O 5400.5	2	RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT (PORTIONS APPLY)	
DOE O 5480.19	2	CONDUCT OF OPERATIONS REQUIREMENTS FOR DOE FACILITIES	

TABLE E.1 DIRECTIVES

Document ID	Change #	TITLE	Remarks
DOE M 200.1-1 CHAPTER 9		TELECOMMUNICATION SECURITY MANUAL - PUBLIC KEY CRYPTOGRAPHY AND KEY MANAGEMENT	
DOE M 205.1-2 CRD		NATIONAL SECURITY SYSTEM MANUAL	
DOE M 231.1-1A CRD	2	ENVIRONMENT, SAFETY, AND HEALTH REPORTING MANUAL	
DOE M 231.1-2 CRD		OCCURRENCE REPORTING AND PROCESSING OF OPERATIONS INFORMATION	
DOE M 442.1-1 CRD		DIFFERING PROFESSIONAL OPINIONS MANUAL FOR TECHNICAL	
DOE M 450.4-1 CRD		INTEGRATED SAFETY MANAGEMENT SYSTEM MANUAL	
DOE M 470.4-1 CRD	1	SAFEGUARDS AND SECURITY PROGRAM PLANNING AND MANAGEMENT	
DOE M 470.4-2 CRD	1	PHYSICAL PROTECTION	
DOE M 470.4-3 CRD	1	PROTECTIVE FORCE	
DOE M 470.4-4 CRD	1	INFORMATION SECURITY	
DOE M 470.4-5 CRD		PERSONNEL SECURITY	
DOE M 470.4-6 CRD	1	NUCLEAR MATERIAL CONTROL AND ACCOUNTABILITY	
DOE M 470.4-7		SAFEGUARDS AND SECURITY PROGRAM REFERENCES	
DOE M 471.1-1	1	IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION MANUAL	
DOE M 471.3-1 CRD		MANUAL FOR IDENTIFYING AND PROTECTING OFFICIAL USE ONLY INFORMATION	
DOE M 475.1-1A CRD		IDENTIFYING CLASSIFIED INFORMATION	
DOE N 144.1		CHANGE TO DOE O 1230.2	
DOE N 206.4		PERSONAL IDENTITY VERIFICATION	

TABLE E.1 DIRECTIVES

Document ID	Change #	TITLE	Remarks
DOE N 206.5		RESPONSE AND NOTIFICATION PROCEDURES FOR DATA BREACHES INVOLVING PERSONALLY IDENTIFIABLE INFORMATION	

Guides

Guides support Orders with the same number. Guides provide non-mandatory, supplemental information about acceptable methods for implementing requirements, including lessons learned, suggested practices, instructions, and suggested performance measures.

Guides may identify acceptable ways to implement requirements by referencing appropriate Technical Standards, but they shall not impose additional requirements. Current guides may be found at: <http://www.directives.doe.gov/directives/current.html#number>

DOE Technical Standards and Good Practice Guides

Technical Standards and Related Documents are non-mandatory criteria managed under the Technical Standards Program to provide guidance to contractors and DOE personnel on acceptable methods for meeting requirements." Current standards may found at: <http://www.eh.doe.gov/techstds/standard/standard.html>

TABLE E.2 MANDATORY STANDARDS

Document ID	Revision No.	TITLE	Remarks
DOE-STD-1090-07		HOISTING AND RIGGING	Use of this Standard is mandated by Secretarial Direction

TABLE E.3 DOE POLICIES

Document ID	TITLE	Remarks
DOE P 205.1	Departmental Cyber Security Management Policy	
DOE P 310.1	Maximum Entry and Mandatory Separation Ages For Certain Security Employees	
DOE P 441.1	DOE Radiological Health and Safety Policy	
DOE P 450.2A	Identifying, Implementing and Complying with Environment, Safety and Health Requirements	
DOE P 450.4	Safety Management System Policy	
DOE P 450.7	Environment, Safety and Health (ESH) Goals	
DOE P 470.1	Integrated Safeguards and Security Management (ISSM) Policy	

TABLE E.4 OCRWM POLICIES

DocumentID	Approval Date	Effective Date	TITLE	Remarks
DOE POLICY 1	5-Dec-97	5-Dec-97	CONTROLLED USE OF SCIENTIFIC AND ENGINEERING DATA AND MODELS IN SUPPORT OF THE YUCCA MOUNTAIN SITE CHARACTERIZATION PROJECT LICENSE APPLICATION (DC #39226)	See CR 10286
DOE POLICY 14	13-Sep-01	13-Sep-01	UNITS OF MEASURE TO BE USED IN DESIGN, FABRICATION, CONSTRUCTION, COMPONENT TESTING, AND OPERATION OF PROCURED ITEMS FOR A REPOSITORY (DC #39239)	
POL-RW-2002-004	6-Sep-02	N/A	MANAGEMENT EXPECTATIONS (DC #33913)	
POL-RW-2003-003	6-Sep-07	6-Sep-07	CONSISTENCY IN COMMUNICATIONS (DC #54266)	See CR 10286
POL-RW-2006-001	13-Apr-06	N/A	NUCLEAR SAFETY CULTURE AND SAFETY CONSCIOUS WORK ENVIRONMENT POLICY STATEMENT (DC#47620)	See CR 10286
POL-RW-2007-001	6-Sep-07	6-Sep-07	OCRWM PUBLIC RELEASE POLICY FOR TECHNICAL PRODUCTS (DC #54267)	See CO Letter dated 4/21/2008 #0422083072 See CR 10286
POL-RW-2007-002	27-Sep-07	N/A	CHANGE MANAGEMENT (DC #54217)	
POL-YMP-2002-005	13-May-02	N/A	PUBLICATION POLICY FOR THE YUCCA MOUNTAIN SITE CHARACTERIZATION PROJECT (DC #39252)	See CR 10286
POL-YMP-2004-001	19-Jul-04	N/A	U.S. DEPARTMENT OF ENERGY (DOE) OCCUPATIONAL RADIATION EXPOSURE POLICY FOR THE REPOSITORY AT YUCCA MOUNTAIN (DC#42323)	See CR 10286
POL-YMP-2004-009	14-Sep-04	N/A	YUCCA MOUNTAIN PROJECT (YMP) ENVIRONMENTAL POLICY STATEMENT (DC #42945)	See CR 10286

TABLE E.5 OCRWM PROCEDURES

Document ID	TITLE	Remarks (See Note)
AP-15.5Q	IDENTIFICATION, EVALUATION AND REPORTING OF 10 CFR PART 21/50.55(E) DEFECTS AND NONCOMPLIANCE	Pending impact assessment and BCP/FCP, as appropriate.
AP-16.1Q	CONDITION REPORTING AND RESOLUTION	Addressed in TDL-07-006. See CR 10286
AP-16.7Q	OCRWM TREND PROGRAM	Addressed in supplement to TDL-07-006.*
AP-17.1Q	RECORDS MANAGEMENT	Addressed in TDL-07-006. See CR 10286
AP-17.3Q	MANAGING ELECTRONIC MAIL RECORDS	Addressed in TDL-07-006.
AP-32.1	OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT CONCERNS PROGRAM	
AP-DIR-002	CONTROL OF POST-CLOSURE WORK SCOPE TRANSITION ACTIVITIES	
AP-EM-002	LAND ACCESS AND ENVIRONMENTAL COMPLIANCE	Addressed in TDL-07-006. See CR 10286
AP-EM-010	ENVIRONMENTAL BASELINE REVIEW	Addressed in TDL-07-006.
AP-ENG-005	TOTAL SYSTEM MODEL (TSM) – USAGE	
AP-ENG-006	TOTAL SYSTEM MODEL (TSM) - CHANGES TO CONFIGURATION ITEMS AND BASE CASE	
AP-EP-001	YUCCA MOUNTAIN PROJECT EMERGENCY OPERATIONS CENTER	See CR 10286
AP-EP-003	JOINT INFORMATION CENTER OPERATION	See CR 10286
AP-EP-016	INDIVIDUAL RESPONSE TO INCIDENT, ACCIDENT, OR EMERGENCY	See CR 10286
AP-OP-004	WORK CONTROL	See CR 10286
AP-OP-008	RANCH CONTROL OPERATION	See CR 10286
AP-REG-009	REPORTABLE GEOLOGIC CONDITION	Addressed in TDL-07-006. See CR 10286
AP-REG-018	INTERACTIONS BETWEEN OCRWM AND THE NWTB	Addressed in TDL-07-006. See CR 10286
AP-REG-021	NRC POSTING AND REPORTING	See CR 10286
AP-SEC-001	IDENTIFICATION, PROTECTION, DISTRIBUTION, AND USE OF SENSITIVE UNCLASSIFIED AND CLASSIFIED INFORMATION	See CR 10286
AP-SEC-004	BADGING AND ACCESS CONTROL	
AP-SIII.3Q	SUBMITTAL AND INCORPORATION OF DATA TO THE TECHNICAL DATA MANAGEMENT SYSTEM	Addressed in TDL-07-006. See CR 10286
AP-SMF-001	SAMPLE OVERVIEW COMMITTEE	

*NOTE: Compliance with the procedures identified in CR 10286 and CRs 12521- 12529 is not required until the actions of the CRs are completed. BSC shall use the Revision and ICN of the remaining listed procedures in effect on the date of the modification. The applicability of some Administrative Procedures are addressed by Technical Direction Letter TDL-07-006 dated November 17, 2006. These are identified above.

TABLE E.6 OCRWM TECHNICAL BASELINE DOCUMENTS

Document ID	Rev/ ICN	Approval Date	Effective Date	TITLE	Remarks (including Contracting Officer Correspondence changing BSC Technical Baseline)
Level 1 Technical Baseline Documents					
DOE/RW-0406	8/0	4-Sep-07	12-Sep-07	CIVILIAN RADIOACTIVE WASTE MANAGEMENT SYSTEM REQUIREMENTS DOCUMENT (CRD) (DC #52013)	CO Letter 07-036 dtd. 9/24/2007 Revision 7 - CO Letter 06-039 dtd. 9/20/2006
DOE/RW-0511	4/1	20-Aug-08	22-Aug-08	INTEGRATED INTERFACE CONTROL DOCUMENT, VOLUME 1 HIGH-LEVEL RADIOACTIVE WASTE AND U.S. DEPARTMENT OF ENERGY AND NAVAL SPENT NUCLEAR FUEL TO THE CIVILIAN RADIOACTIVE WASTE MANAGEMENT SYSTEM (DC #50428)	Revision 4 ICN 1 - CO Letter dtd. 8/28/2008
Level 2 Technical Baseline Documents					
DOE/RW-0351	5/1	Mar-08	Mar-08	WASTE ACCEPTANCE SYSTEM REQUIREMENTS DOCUMENT (DC #32272)	Revision 5 - CO Letter 07-017 dtd. 6/1/2007 Revision 5 ICN 1 - pending Impact Assessment.
DOE/RW-0425	4/0	25-Oct-06	5-Jan-07	TRANSPORTATION SYSTEM REQUIREMENTS DOCUMENT (DC #50252)	Revision 4 - Unnumbered CO Letter dtd. 6/20/2007
DOE/RW-0561	2/1	5-Mar-08	20-Mar-08	PROGRAM WORK BREAKDOWN STRUCTURE (WBS) AND DICTIONARY (DC #51049)	Not officially transmitted as a baseline document
DOE/RW-0572 (ICD-CRW- WAT-000001)	0/0	5-Jul-07	11-Jul-07	INTEGRATED INTERFACE CONTROL DOCUMENT VOLUME 2 - WASTE ACCEPTANCE, TRANSPORTATION, AND MONITORED GEOLOGIC REPOSITORY SYSTEM ELEMENTS (DOE/RW-0572) (DC #53123)	CO Letter 07-026 dtd. 7/13/2007
YMP/CM-0026	2/1	17-Jul-08	25-Jul-08	MONITORED GEOLOGIC REPOSITORY SYSTEMS REQUIREMENTS DOCUMENT (DC #56075)	Revision 2 - CO Letter 08-011 dtd. 3/4/2008 Revision 2 ICN 1 pending Impact Assessment.
OTHER DOCUMENTS					
DOE/RW-0523	2/0	11-Oct-07	15-Oct-07	INTEGRATED SAFETY MANAGEMENT PLAN (DC#54524)	CO Letter 08-019 dtd. 7/25/2008

PART III -LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J – LIST OF ATTACHMENTS

APPENDIX I – REPORTS & PLANS REQUIREMENTS LIST

Reporting Requirement/Owner	Freq.	Distribution	Date Due
1. Annual Work Plans – Ron Szatmary	Y	OGS	As Directed
2. S/C small/disadvantaged contract Report (eSRS) – Spencer R. Peterson, Doris M. Burnett	S	CO, OPMP	April 25 and October 25
3. Cyber Security Program – Daniel Conway	A	OGS	As Required, every 2 yrs
4. Statement of Cost Incurred and Claimed – Spencer R. Peterson, E. Dennis Martinez, Ron Szatmary	Y	CO, NNSA/SC, OGS	November 15
5. Trial Balance Activity – Spencer R. Peterson, E. Dennis Martinez, Lisa Barbee	M	CO, NNSA/SC, OGS	4 th working day following close of calendar mo. and YE as established.
6. Checks Paid Letter of Credit Report – Spencer R. Peterson, E. Dennis Martinez, Lisa Barbee, Joyce Lum	M	CO, NNSA/SC, OGS, CMSOO	30 days after the end of the reporting month
7. Internal Audit Plans – Spencer R. Peterson, C. W. Glines	Y	CO, NNSA/SC	11 th working day after comp. DOE Month- end Close
8. Internal System Audit Reports – Spencer R. Peterson, C. W. Glines	A	CO, NNSA/SC	July 15 or as determined by the OIG
9. Compliance Audit Tracking System Report – Spencer R. Peterson, C.W. Glines	S	CO, NNSA/SC	April 30 th and October 31 st
10. Annual Submittal of Property Management Information – Spencer R. Peterson, Joyce Lum	Y	CO, CMSOO	As directed – close of the fiscal year
11. Negotiated Sales Report - Spencer R. Peterson, Joyce Lum	Y	CO, CMSOO	30 days after close of the fiscal year
12. Excess Personal Property furnished to Non-Federal Recipients - Spencer R. Peterson, Joyce Lum	Y	CO, CMSOO	30 days after close of the fiscal year
13. Enter Data in the DOE Property Information Database System (PIDS) Joyce Lum	Y	CMSOO	30 days after close of the fiscal year
14. Summary Individual Contractor Personal Property Sales – Spencer R. Peterson, Joyce Lum, Gary Gilliland	Q	CO, CMSOO, NNSA/SC	30 days after reporting quarter
15. Final Property Inventory Report – Spencer R. Peterson, Joyce Lum	Y	CO, CMSOO	As Required

Reporting Requirement/Owner	Freq.	Distribution	Date Due
16. Property Theft Report – Spencer R. Peterson, Joyce Lum	Q	CO, CMSOO	As Required
17. Actuarial Valuation for the BSC defined benefit plan - Spencer R. Peterson, Cheryl Abernathy	Y	CO, OPMP	9 mos. after beg. of plan year
18. IRS Form 5500 – Spencer R. Peterson, Cheryl Abernathy	Y	CO, OPMP	As Required (30 days after submission to IRS)
19. Report of Compensation – Spencer R. Peterson, Cheryl Abernathy	S	CO, OPMP	Apr 15 & Oct 15
20. Contractor Salary/Wage Increase Expenditure Report – Spencer R. Peterson, Cheryl Abernathy	Y	CO, OPMP	45 days after plan approved
21. Report of Employment – Spencer R. Peterson, Cheryl Abernathy	Q	CO, OPMP	As of 1/10; 4/10; 7/10; 10/10
22. Affirmative Action Plan – Spencer R. Peterson, Cheryl Abernathy	Y	CO, OPMP	December 12
23. Report of Contractor Exp for Supplemental Compensation – Spencer R. Peterson, Cheryl Abernathy	Y	CO, OPMP	March 15
24. Training/Educational Reimbursement Log – Spencer R. Peterson	A, S	CO	As required, April 15 and October 15
25. MYPS Database Upload - Wayne Kozai	M	Database	15 th calendar day following reporting month
26. GM Assurance Memo for FMFIA– HCA, Roundtree-McLennan, Spencer R. Peterson	Y	OPMP, NNSA/SC, CO	October 1
27. M&O Overtime Report – Spencer R. Peterson, Cheryl Abernathy	M	CO, OPMP (Email)	15 th calendar day following reporting month
28. Contractor Fulltime Equivalent Report – Spencer R. Peterson	M	CO (Email)	15 th calendar day following reporting month
29. Open Commitment Report – Wayne Kozai	M	OPMP (Email)	10 th calendar day following reporting month
30. Contractor Travel Report – Spencer R. Peterson, Lisa Barbee	Q	CO, OGS	20 calendar days after reporting quarter
31. Functional Support Cost Report – Spencer R. Peterson, D. Martinez	Y	CO, NNSA/SC	November 15
32. Balanced Scorecard Reports – Spencer R. Peterson, Joyce Lum	Y	CO, CMSOO	30 days after close of the fiscal year
33. Balanced Scorecard Plans – Spencer R. Peterson, Joyce Lum	Y	CO, CMSOO	September 30
34. List of Funds Certifying Officers – Spencer R. Peterson	A	CO	As required
35. Payment-Equal-To-Taxes (PETT) Information Packages – Claire Sinclair	Y	OEA	As required

LEGEND: A=As Req'd; M-Monthly; Q-Quarterly; S-Semi-annually; Y=Yearly

**DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN
RADIOACTIVE WASTE
MANAGEMENT**

**Performance Evaluation and Measurement Plan
for
Bechtel SAIC Company, LLC
Contract DE-AC28-01RW12101**

**Performance Period:
April 1, 2008 through March 31, 2009**

REVISION 13, CHANGE 1

**DOE OCRWM PERFORMANCE EVALUATION AND MEASUREMENT PLAN
BECHTEL SAIC COMPANY, LLC – CONTRACT DE-AC28-01RW12101**

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**DOE OCRWM PERFORMANCE EVALUATION AND MEASUREMENT PLAN
BECHTEL SAIC COMPANY, LLC – CONTRACT DE-AC28-01RW12101**

ACRONYMS

BSC.....	Bechtel SAIC Company, LLC
DOE/HQ	DOE Headquarters
FDO.....	Fee Determination Official
FY	Fiscal Year
OCRWM.....	Office of Civilian Radioactive Waste Management
PBI.....	Performance Based Incentive
PEB	Performance Evaluation Board
PEMP	Performance Evaluation and Measurement Plan
SEA.....	Special Emphasis Area

A. INTRODUCTION. This Performance Evaluation and Measurement Plan (PEMP) defines the Office of Civilian Radioactive Waste Management (OCRWM) approach in evaluating, documenting, and providing performance fee to Bechtel SAIC Company, LLC (BSC), in the execution of requirements defined in Contract DE-AC28-01RW12101. This PEMP is for the third year of the contract option period of performance from April 1, 2008, through March 31, 2009.

1.1 PEMP Objectives

- 1.1.1 Provide OCRWM with a mechanism to achieve its highest priority objectives;
- 1.1.2 Provide incentive to BSC to accomplish OCRWM's management and program objectives through the establishment of critical performance objectives and measures;
- 1.1.3 Reward BSC with fee commensurate with the achievement of the specific OCRWM performance requirements;
- 1.1.4 Create an administratively efficient process to assess BSC performance;
- 1.1.5 Provide a fair and reasonable basis for determining the amount of fee earned; and
- 1.1.6 Create a process that ensures BSC work efforts are executed in a manner that provides high value and high quality deliverables to OCRWM.

**DOE OCRWM PERFORMANCE EVALUATION AND MEASUREMENT PLAN
BECHTEL SAIC COMPANY, LLC – CONTRACT DE-AC28-01RW12101**

1.2 Definitions

- 1.2.1 Award Fee. The subjective fee component of Performance Fee.
- 1.2.2 Expected Performance Level. Meets agreed upon requirements and performance objectives.
- 1.2.3 Fee Determination Official. The final authority in determination of fee awarded to BSC with the concurrence of RW-1 (per Program Manual DOE/RW-0555) prior to final fee determination.
- 1.2.4 Multi-year Incentive. An incentive designed to establish performance objectives and measures beyond one fiscal year or evaluation period.
- 1.2.5 Office of Civilian Radioactive Waste Management (OCRWM). OCRWM is a headquarters organization.
- 1.2.6 Performance Evaluation Board. For the purpose of this PEMP, designated OCRWM senior managers are chartered with recommending BSC earned fee to the Fee Determination Official (FDO).
- 1.2.7 Performance Evaluation and Measurement Plan. A plan that defines an approach in evaluating, documenting, and providing performance fee against specified Performance Based Incentives and Award Fee Incentives.
- 1.2.8 Performance Evaluation Period. The two specific periods for which the Performance Evaluation Board evaluates contractor's overall performance: April 1 through September 30; October 1 through March 31.
- 1.2.9 Performance Fee. That portion of the total available fee which is tied exclusively to the contractor's performance of the contract. The performance fee amount will consist of an incentive fee component for objective performance requirements and an award fee component for subjective performance requirements, or both.
- 1.2.10 Performance Incentive. A performance incentive represents a reward or consequences that may be employed to motivate a contractor to achieve baseline or higher levels of performance of a requirement. In most instances, the incentive represents an amount of fee tied to the accomplishment of a performance objective.
- 1.2.11 Performance Measure. The quantitative method for characterizing performance.
- 1.2.12 Performance Monitor. Designated by the Performance Evaluation Board as responsible individuals monitoring and evaluating the contractor's performance.

**DOE OCRWM PERFORMANCE EVALUATION AND MEASUREMENT PLAN
BECHTEL SAIC COMPANY, LLC – CONTRACT DE-AC28-01RW12101**

1.2.13 Performance Objective. A statement of desired results from an organization or activity.

1.2.14 Provisional Payment of Fee. Any payments paid on a provisional basis may be reclaimed.

1.2.15 Special Emphasis Area. An area that is extremely important to DOE and OCRWM.

1.2.16 Work Authorization Directive (WAD). The execution year baseline that serves as the agreement between BSC and OCRWM to perform a specific scope of work.

1.3 Fee Concept

Performance-based management contracting principles emphasize results-oriented work statements, and performance objectives and measures to incentivize contractors to achieve excellent performance. OCRWM implements performance-based management contracting principles through processes associated with *Strategic Planning, Budget Formulation, Budget Execution, and Performance Evaluation*. These processes, defined in the “Annual Work Plan”, consist of strategic planning, developing performance objectives, defining work scope through the Work Authorization Directives (WADs) process, and evaluating results.

BSC is responsible for the overall planning, managing and integration of all work activities and products, designing, constructing and operating a first-of-a-kind facility to permanently dispose of spent nuclear fuel and high-level radioactive waste. Because of the nature of this work, OCRWM utilizes performance fee to incentivize and reward BSC for performance. Performance fee consists of two components: an incentive fee component which provides management focus and emphasis on OCRWM’s critical few program objectives and an award fee component which provides management focus on all other aspects of BSC’s performance such as overall program, current importance to the overall performance of the contract, their potential for being problem areas, and/or current degree of concern for performance.

1.3.1 Performance Based Incentive (PBI)

The PBI performance measures and fee measures are delineated in Attachment 1 of this PEMP. Emphasis will be placed on development of objective incentives based on definition of the desired outcome (the “what”) and expect the contractor to compliantly and safely determine “how” the work is performed to achieve the desired outcome within the established funding constraints. These incentives are identified as PBIs and typically carry more performance risk and higher fee earning opportunities.

1.3.2 Award Fee Special Emphasis Area (SEA) Incentives

DOE OCRWM PERFORMANCE EVALUATION AND MEASUREMENT PLAN BECHTEL SAIC COMPANY, LLC – CONTRACT DE-AC28-01RW12101

The SEA performance objectives and measures are delineated in Attachment 1 of the PEMP. In certain instances, the contractor must provide support and/or deliverables that are required to accomplish the project objectives but are not objectively measurable in all cases. These efforts are therefore measured subjectively under incentives identified as SEAs and typically carry reduced performance risk and moderate fee earning opportunities and the FDO may use discretionary factors in determining fee. Consideration will also be given to complete and accurate technical information/products delivered in mutually agreed time frames that meet all applicable codes, standards, rules, regulations and orders.

B. REFERENCES. U.S. Department of Energy Office of Civilian Radioactive Waste Management Contract with BSC for Management and Operating Support for the Office of Civilian Radioactive Waste Management; Contract DE-AC28-01RW12101.

C. ORGANIZATIONAL STRUCTURE FOR PERFORMANCE FEE

ADMINISTRATION. The effectiveness of this PEMP requires the establishment of a close working relationship between DOE-OCRWM, and BSC because all entities are responsible for successful implementation of the plan and successful completion of OCRWM's significant management and program objectives. The roles and responsibilities of the key personnel are as follows:

2.1 DOE/HQ

Office of Contract Management (MA-62)

- Reviews and approves PEMP.

2.2 OCRWM

2.2.1 Office of Civilian Radioactive Waste Management (OCRWM)

- Provides oversight of the performance fee administration process.
- Provides program management and planning objectives.

2.2.2 Director, Office of Project Management and Procurement (OPM&P)

- The Head of Contracting Activity (HCA) and serves as FDO.
- Formally charts the Performance Evaluation Board (PEB) to ensure senior management involvement and accountability.
- Provides recommended PEMP to DOE/HQ MA-62 for approval.
- Obtain RW-1 concurrence prior to final Fee Determination.

2.2.3 Procurement Division Director

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- Serves as Chair of the PEB.
- Initiates meetings for development of performance objectives.
- Develops meeting agendas as appropriate.
- Prioritizes proposed performance objectives.
- Solicits additional information when necessary.
- Forwards draft to the RW-1 for review/approval.
- Resolves OCRWM comments.
- Recommends HCA forward draft performance objectives/measures to HQs Procurement for approval.
- Resolves HQs Procurement comments.
- Provides draft to the contractor for review/comments.
- Resolves contractor comments.
- Ensures a unilateral plan 30 days prior to the start of the performance period.
- Documents decisions of the group via appointed scribe.
- Reviews draft evaluation report.
- Coordinates changes with Performance Monitors (PMs).
- Reviews report for a second time to ensure DOE responses to contractor's comments to draft report for factual accuracy.
- Coordinates with FDO during PEMP evaluation and fee recommendation.
- Provide fee recommendation to the FDO.

2.2.4 Performance Evaluation Board

- Accountable for final selection and approval of contract-specific performance-based and award fee incentives
- Assigns responsibilities to PMs to monitor and evaluate completion of performance against objectives and measures for PBIs and SEAs.
- Provides input, reviews, and concurs on the PEMP.
- Reviews BSC performance at the end of the evaluation period and upon completion of key milestones.
- Evaluates BSC performance and recommends earned fee to the FDO.

2.2.5 Performance Evaluation Board Members/Performance Monitors

- Attend all meetings unless formally excused by the Chair (the Office Directors, or a senior designee from their organization, will represent the membership of the PEB. Meetings will not be held without a quorum).
- Actively participate in meetings.
- Assure all program activities are represented.
- Accountable for finalizing performance objectives/measures.
- Monitor and evaluate completion of performance objectives.
- Provides input, review, and concur on performance objectives.

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- Provides independent assessment of BSC performance and recommend earned fee to the Fee Determination Official.
- Validate and document completion of PBI and SEA performance objectives and measures.
- Elevate recommendations, issues or concerns to the Chair.
- Reviews and considers BSC self-assessments in recommending fee.

2.2.6 Contracting Officer

- Transmits the PEMP to the contractor.
- Provides input, reviews, and concurs on the PEMP PBI and SEA objectives and measures to achieve OCRWM's management and program requirements.
- Determines the completion and achievement of the performance objectives and measures.
- Approves changes to the PEMP with prior recommendation of the Contracting Officer Representative.

2.2.7 Procurement Division

- Issues call letters for input in the development of the PEMP.
- Submits draft PEMP to PMs and BSC for review and comment.
- Consolidates, coordinates, and incorporates comments to the PEMP.
- Obtains appropriate concurrence and approvals of the PEMP.
- Issues call letter to PMs for input to BSC performance evaluation report.
- Coordinates evaluations of BSC's performance with the PEB.
- Consolidates input from OCRWM PMs.
- Coordinates training for participants in the performance fee process.

In the absence of the FDO, the individual acting in the same official capacity will assume the function of FDO. In the absence of a board member, another person having similar qualifications may be substituted.

2.3 BSC

General Manager

- Collaborates with OCRWM management to establish a working relationship that enables production of high value deliverables.
- Supports the development of the PEMP and enhances the process through the sharing of best practices and lessons learned.
- Responsible for the achievement of performance objectives and measures.
- Provides self-assessments of performance against PBI and SEA performance objectives and measures to the PEB.

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D. METHOD FOR DETERMINING PERFORMANCE FEE

a. Communication with BSC during the Evaluation Period

One important consideration for evaluation will be discussions between the Performance Monitor (PM) and their BSC counterpart. It is a management expectation that PMs meet with their BSC counterpart at least monthly to review, discuss, and provide interface on BSC's performance against the performance-based and award fee incentives and overall contract performance.

Regular communication with BSC at the PM level will contribute to the success of the fee process. PM should discuss performance which may not currently meet performance objectives and measures, and thereby keep BSC informed as to achievements and deficiencies that may appear in the final evaluation for the period. OCRWM has re-establish the OCRWM Monthly Project Review that provides interface between OCRWM and BSC.

b. BSC Self Assessment

BSC shall provide the OCRWM Contracting Officer with a self-assessment within ten (10) working days upon completion of a PBI and after the end of an award fee evaluation period. BSC must also provide three (3) hard copies and an electronic copy of its self-assessment of performance to OCRWM Procurement Division for distribution to OCRWM Performance Monitors.

BSC shall use the project control system to measure progress in meeting deliverables within cost, schedule and scope, including meeting the specified acceptance criteria. BSC shall identify issues potentially affecting the completion of individual PBIs and SEAs and the overall success of the program, and actions taken or recommended to resolve those issues. BSC's self-assessment shall propose and justify the amount of performance based incentive and award fee earned, and include a discussion of fee reductions warranted by any failure to meet performance expectation. In the event the contractor self-discloses a situation that falls within the support of a special emphasis area, and appropriately self-corrects the situation in a timely manner, fee reduction may be waived by the CO. The timeliness and effectiveness of the contractor's corrective action may also mitigate fee reductions for deficiencies identified by OCRWM or other regulatory entities.

c. OCRWM Assessment

OCRWM Performance Monitors shall prepare and submit to OCRWM Procurement Division, an independent assessment of BSC's performance within 20 calendar days upon LP-7.5Q-OCRWM acceptance of a PBI and after the end of an award fee evaluation period. The OCRWM Performance Monitor shall consider BSC's input with respect to completing the PBI and SEA performance criteria and with respect to the quality. Where significant disagreement exists between BSC's self assessment and OCRWM's

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assessment, the responsible OCRWM Performance Monitor shall raise such disagreements to the PEB for resolution. BSC may be requested to attend a Board meeting to assure their view is understood.

OCRWM Performance Monitors shall also consider the additional input received during monthly operating reviews. Such reviews will enable Program-wide understanding of progress, an integrated assessment of impacts, and the identification of corrective actions. Assessments shall also document the rationale for any reduction in the amount of award fee earned.

OCRWM Procurement Division will consolidate OCRWM Performance Monitor Evaluation Reports and submit a written evaluation report to the PEB members for approval.

d. Performance Evaluation Process

Except as provided for in the specific PBI, the following steps apply:

1. Within ten (10) working days upon completion of a PBI, and after the end of an award evaluation period, BSC shall provide the OCRWM Contracting Officer with a self-assessment. The self-assessment provided shall provide an assessment of their performance in the completion of a PBI and award fee performance objectives and measures. The contractor will provide three (3) hard copies, and an electronic copy, of its self-assessment of performance to OCRWM Contracting Officer for distribution to OCRWM Performance Monitors.
2. Within twenty (20) calendar days upon LP-7.5Q-OCRWM acceptance of a PBI and after the end of an award fee evaluation period, OCRWM Performance Monitors will prepare and submit an independent assessment of BSC's performance, with respect to quality and schedule, against the performance objectives and measures to OCRWM Procurement Division for consolidation. The OCRWM Performance Monitor shall consider BSC's input with respect to payments of fee. Where significant disagreement exists between BSC's self assessment and OCRWM's assessment, the responsible Performance Monitor shall raise such disagreements to the PEB for resolution. BSC may be requested to attend a Board meeting to assure their view is understood.

The OCRWM assessment must be submitted on the Performance Monitor Evaluation Report form, Attachment 2 of the Plan, and will only be accepted by the OCRWM Procurement Division upon the approval of the OCRWM Performance Monitor.

3. Within approximately thirty (30) calendar days upon LP-7.5Q-OCRWM acceptance of a PBI and after the end of an award fee evaluation period, OCRWM Procurement Division will consolidate Performance Monitor Evaluation Reports and submit to the PEB members for review.

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4. Within approximately sixty (60) calendar days upon LP-7.5Q-OCRWM acceptance of a PBI and after the end of an award fee evaluation period, the PEB will review, validate, and prepare an evaluation report and submit a fee recommendation to the FDO.
5. Within seventy (70) calendar days upon LP-7.5Q-OCRWM acceptance of a PBI and after the end of an award fee evaluation period or 60 calendar days after receipt of contractor's self-assessment for award fee (whichever is later), the FDO will make a determination of the fee earned.

Figure 1 is a flowchart that illustrates the entire process.

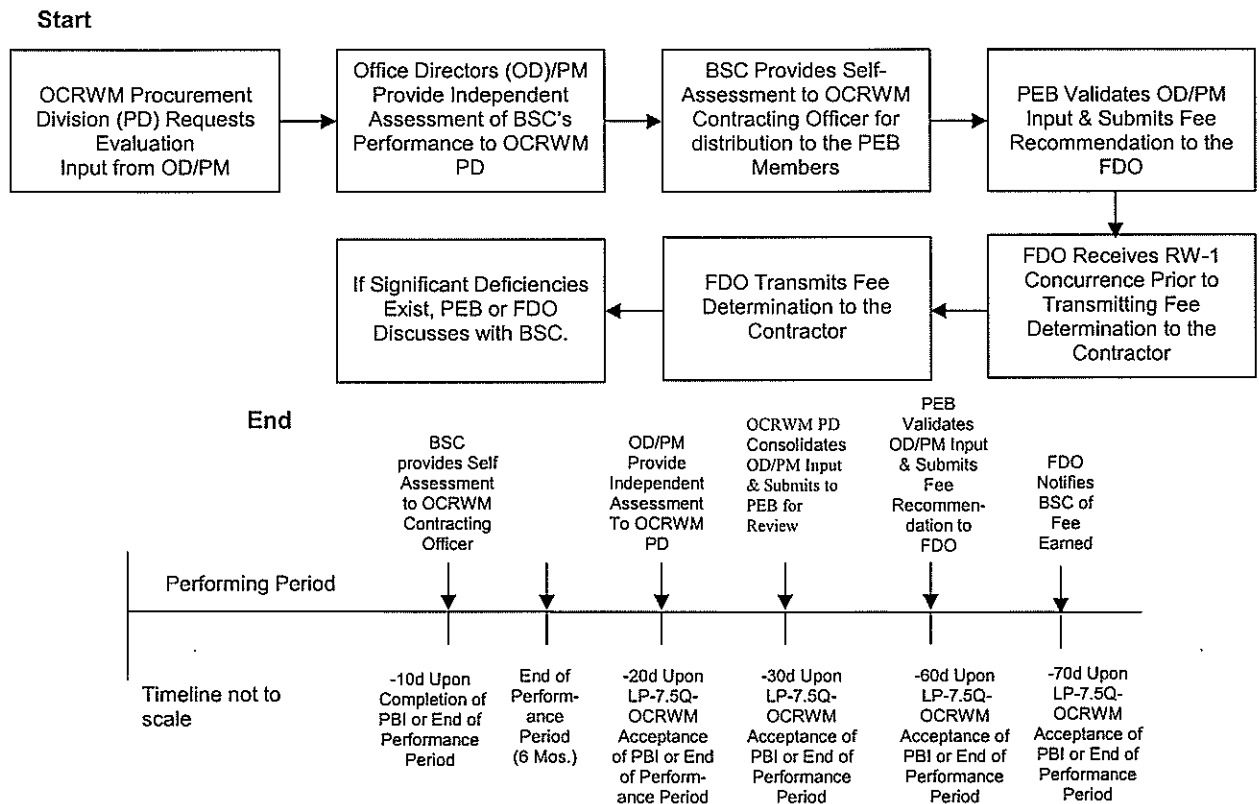


Figure 1, Flowchart and Time Line of Fee Process

e. Evaluation and Discussion Documentation

Where meetings or discussions are held by the PM (with BSC, HQ, or others) that significantly impact award fee evaluations, it is necessary that appropriate documentation be created. This documentation can be in the form of signed and dated notes, minutes, or correspondence. Copies of the PM documentation should be maintained by the PM in support of the Performance Evaluation Report.

Rationale for fee payments will be documented by the Performance Evaluation Board and the fee determination official. The final PEB Fee Recommendation and FDO Fee

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Determination reports along with supporting rationale will be maintained by the OCRWM Procurement Division organization in the official “contract file”.

E. PEB INVOLVEMENT IN FINAL EVALUATIONS

The PEB is responsible for reviewing the Performance Evaluation Reports and developing a Fee Recommendation Report to the FDO. The Chair, PEB, will provide updates and feedback to the FDO prior to receiving the PEB’s final signed fee recommendation report.

As directed by the FDO, and especially if significant deficiencies exist, the Fee Recommendation Report is discussed with BSC General Manager by the PEB, individual board members, and/or the FDO. Because the Fee Recommendation Report is pre-decisional, its contents will not be formally provided to BSC.

F. FDO RESPONSIBILITIES IN FINAL EVALUATIONS

The FDO may meet with BSC, as appropriate, during the process of developing his/her evaluation position. Based on the FDO’s personal knowledge, the information contained in BSC’s self-assessment, the PEB Fee Recommendation Report, and/or other information relating to BSC’s performance of the contract requirements, the FDO develops a determination on the evaluation and award fee. The FDO briefs the OCRWM Director and obtains the concurrence of the OCRWM Director. Where there are significant concerns with BSC’s overall performance, the FDO will notify the HQ Procurement Executive.

Following OCRWM Director’s receipt of concurrence(s), the FDO issues a Fee Determination letter of award fee earned to BSC.

G. METHOD FOR CHANGING PLAN COVERAGE

Proposed changes to the PEMP may be initiated by OCRWM or BSC. Proposed changes to the PEMP may be initiated on the official PEMP Change Form (Attachment 4). The respective Performance Monitor will review and concur on proposed changes prior to any changes being made to the PEMP.

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ATTACHMENT 1

**SPECIAL EMPHASIS AREA
OVERALL GRADES & ASSOCIATED PERCENTAGES OF EARNED FEE**

- A. Outstanding: Performance substantially exceeded expected levels of performance against award fee criteria identified in the PEMP. All other requirements, not specifically addressed in this PEMP, were performed at or above minimum acceptable levels. (Percent Fee Range: 95 to 100%)
- B. Good: Performance generally exceeded expected levels of performance against award fee criteria identified in the PEMP and with rare exception, other contract requirements, not specifically addressed in this PEMP, were performed at or above minimum acceptable levels. (Percent Fee Range: 75 to 94.9%)
- C. Satisfactory: Performance generally met expected levels of performance against award fee criteria identified in the PEMP. Generally other contract requirements, not specifically addressed in this PEMP, were performed at or above minimum acceptable levels. (Percent Fee Range: 45 to 74.9%)
- D. Unsatisfactory: Performance against award fee criteria identified in the PEMP was either generally unacceptable or unacceptable for the majority of the specific objectives. Actual or potential negative impacts on mission capabilities resulted or could result from performance. (Percent Fee: 0%)

Award Fee: The period of performance is April 1, 2008, through March 31, 2009. The total available fee is split evenly between the PBIs and SEAs. At the conclusion of each 6-month evaluation period (*April 1, 2008, through September 30, 2008 and October 1, 2008, through March 31, 2009*) DOE will determine the award fee associated with the PBIs and SEAs.

To be minimally acceptable, all contractor formal products by contract, DOE Order, regulation, procedure, plan, or DOE written direction shall be complete, accurate, and on schedule. Requirements shall clearly flow down and be transparent within the product and ensure compliance with ES&H and QA requirements. Evidence of unsatisfactory performance on the part of the contractor is: (1) technical errors or omissions in contractor developed products, (2) performance not completed by COB on the agreed upon date scheduled, and (3) non-compliance with designated Completion Criteria.

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PERFORMANCE BASED INCENTIVES

PERFORMANCE BASED INCENTIVES	VALUE	PERFORMANCE MONITOR
PBI 1 - Preparing for License Application Defense	15%	William Boyle
PBI 2 - Deliver Preliminary Steel and Concrete Design Calculations using the Tier-2 Model for Initial Handling Facility and Wet Handling Facility	10%	Paul Harrington
PBI 3 - Completion of Waste Package configurations	10%	Paul Harrington
PBI 4 - Perform important to safety (ITS) facility overturning calculations using alternative methodology	5%	Paul Harrington
PBI 5 - Develop design and procurement performance specifications for mechanical handling equipment	10%	Paul Harrington
Total PBI Fee Available	50%	

AWARD FEE SPECIAL EMPHASIS AREAS

SPECIAL EMPHASIS AREAS	VALUE	PERFORMANCE MONITOR
SEA 1 – LA Defense	10% Apr-Sep 08 25% Oct-Mar 09	William Boyle
SEA 2 – Programmatic	5% Apr-Sep 08 10% Oct-Mar 09	James Hollrith
Total SEA Fee Available	50%	

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PERFORMANCE BASED INCENTIVE (PBI) NO. 1

Preparing for LA Defense

Period of Performance: April 1, 2008, to March 31, 2009

Total PBI 1 Fee Available: 15%

- Milestone (a): 10%
- Milestone (b): 5%

Contractor Requirements:

The Contractor shall establish and document a Comprehensive Process and establish a Human Resource Pool to support the docketing, licensing, and related activities for DOE's application to the NRC.

The Contractor shall establish the Licensing Support Office (LSO) in Rockville, Maryland.

Performance Objectives:

- Milestone (a): The Contractor shall establish and document a Comprehensive Process and establish the Human Resource Pool by June 6, 2008
- Milestone (b): The Contractor shall establish the LSO by May 31, 2008

Incentive Fee Metrics:

- Milestone (a): Incentive fee is earned at the conclusion of the 6-month evaluation period ending September 30, 2008.
- Milestone (b): Incentive fee is earned at the conclusion of the 6-month evaluation period ending September 30, 2008.

Completion Criteria:

By June 6, 2008, BSC shall have a BSC approved comprehensive process and document such process in a deliverable entitled License Application Defense Plan (LADP). A preliminary draft of the Plan shall be delivered by May 1, 2008. DOE will review and endorse the preliminary draft within 10 calendar days. The Plan will describe activities that will take place post-LA submittal. This will include activities during docketing and post docketing. It will include a description of the roles and responsibilities for the organizations that will be involved in the licensing defense. As a minimum, these organizations include: the Regulatory Authority Office (RAO), the Office of General Counsel, the Office of the Chief Engineer, the Office of the Chief Scientist, the Naval Nuclear Propulsion Program (NNPP), BSC, and Lead Laboratory. The description of how these organizations will function in the development of the Requests for Additional Information (RAIs)

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will be included. The Plan will describe how the RAI process will be tracked, including the development, acquisition, or use of appropriate software. The Plan will discuss how the organization will interact with NRC during docketing, technical review, hearing, and litigation. The process for approval and submittal for Safety Analysis Report (SAR) updates will be included. The Plan will include a description of the implementing procedures required for licensing defense. This will include procedures for commitment management and control of RAI responses, written communications, change management, and other necessary procedures as appropriate.

The Human Resource Pool shall consist of qualified personnel from DOE, BSC, Lead Laboratory, NNPP and expert advisors and other personnel, as appropriate. BSC shall be responsible for defining the positions, program-wide, that comprise the Human Resource Pool; ensuring that BSC-owned positions are staffed; integrating and monitoring the staffing of non-BSC positions; and reporting to DOE any issues relative to the Human Resource Pool that may adversely affect the LADP. All BSC lead personnel will be approved by the Director, RAO based on proposed leaders' qualifications and experience related to License Application defense, project management, and relevant technical expertise. BSC leads will, in turn, select the remaining complement of qualified BSC team members and submit documentation of personnel qualifications to DOE. All responsibility for performance of BSC personnel shall remain solely with BSC.

By May 31, 2008, BSC shall establish the LSO in Rockville, Maryland. Office modifications will be complete, office will be furnished, equipment will be installed and operable and interfacing with other OCRWM sites, and office will be functioning. Office will be in compliance with BSC Sublease with CPH6000, LLC.

Acceptance Criteria:

DOE will review and endorse the preliminary draft of the LADP within 10 calendar days of delivery to DOE.

DOE will accept, accept with conditions, or reject Contractor's Comprehensive Process as described in the LADP document within 30 calendar days of delivery of document to DOE.

DOE will approve or disapprove BSC proposed lead personnel within 5 working days of submittal by BSC.

The LSO will be approved by a walk-through inspection and check of equipment by the DOE LSO Supervisor or designated representative within 10 working days following notification of readiness by BSC.

In the event the deliverable date is not met, the total available fee assigned to the PBI milestone will be reduced by 5% per calendar day until delivery of the document to DOE. If the deliverable is rejected, the same 5% per calendar day reduction applies until an acceptable deliverable is provided. The 5% per day reduction is calculated from the original due date.

PERFORMANCE BASED INCENTIVE (PBI) NO. 2

Deliver Preliminary Steel and Concrete Design Calculations using the Tier-2 Model for Initial Handling Facility and Wet Handling Facility.

Period of Performance: April 1, 2008, through March 31, 2009

Total PBI 2 Fee Available: 10%

- Milestone (a): 5%
- Milestone (b): 5%

Contractor Requirements:

The Preliminary Steel and Concrete Calculations using the Tier 2 model shall be developed in accordance with the appropriate BSC procedures and submitted to DOE for acceptance review under DOE procedure LP-7.21Q-OCRWM.

Performance Objectives:

- Milestone (a): The Contractor shall deliver the Preliminary Steel and Concrete Design Calculations using the Tier 2 model for one of the Initial Handling Facility (IHF) [P3 ID #'s RP5L1065, RP5L1150] no later than August 31, 2008.
- Milestone (b): The Contractor shall deliver the Preliminary Steel and Concrete Design Calculations using the Tier 2 model for the Wet Handling Facility (WHF) [P3 ID #'s RPHL1065, RPHL1150] no later than August 31, 2008.

Incentive Fee Metrics:

- Milestone (a): Incentive fee is earned at the conclusion of the 6-month evaluation period ending September 30, 2008.
- Milestone (b): Incentive fee is earned at the conclusion of the 6-month evaluation period ending September 30, 2008.

Completion Criteria

The Contractor shall deliver the Preliminary Steel and Concrete Design Calculations using the Tier 2 model as required above. The documents are transmitted by a transmittal letter and are considered delivered when the OCRWM Chief Engineer signs the transmittal letter acknowledging receipt. For purposes of this PBI, the documents are accepted upon the date of signature by the Contracting Officer's Representative following completion of the LP-7.21Q-OCRWM review process.

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Acceptance Criteria: DOE will accept, accept with conditions, or reject Contractor documents within 30 calendar days of delivery to DOE. In the event the deliverable date is not met, the total available fee assigned to the PBI milestone will be reduced by 1% per calendar day until delivery of the document to DOE. If the deliverable is rejected, the same 1% per calendar day reduction applies until an acceptable deliverable is provided. The 1% per day reduction is calculated from the original due date.

PERFORMANCE BASED INCENTIVE (PBI) NO. 3

Completion of Waste Package configurations.

Period of Performance: April 1, 2008, through March 31, 2009

Total PBI 3 Fee Available: 10%

Contractor Requirements:

Complete license application level design including drawings and calculations (design media) developed in accordance with the appropriate BSC procedures, for the waste package configurations that were not completed at time of LA submittal. Certain waste package configurations were developed as representative or bounding for various design parameters. This action is to perform the analyses for those parameters on the configurations that had not been selected as representative, such that all waste package configurations have similar levels of analysis. The design media shall be developed in accordance with the appropriate BSC procedures and submitted to DOE for acceptance review under DOE procedure LP-7.21Q-OCRWM.

Performance Objectives:

The Contractor shall deliver, no later than December 31, 2008, design media to support licensing defense for the waste package design by advancing the design of the Non-Flagship waste package configurations. These configurations include:

- DHLW/DOE SNF Long Co-disposal configuration
- Naval SNF Short configuration
- 2-MCO/2-DHLW configuration

The design products to be completed are three (3) dynamic structural calculations:

- 2-MCO/2-DHLW Waste Package Oblique Impact in TEV
- Nonlithophysal Rock Impact on 2-MCO/2-DHLW Waste Package
- Naval Short Oblique Impact in TEV

The two (2) thermal analyses to be completed are:

- 2-MCO/2-DHLW Thermal Analysis
- DHLW/DOE SNF Long Co-disposal Thermal Analysis

Incentive Fee Metrics:

Incentive fee is earned at the conclusion of the 6-month evaluation period ending March 31, 2009.

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Completion Criteria

To support development of these calculations detailed waste package sketches will be developed. These design sketches will issue as stand alone drawings that are referenced by the design calculations. There will be approximately 5 sheets per waste package configuration identified above.

The Contractor shall deliver the design media for the identified waste package configurations no later than December 31, 2008. The documents are transmitted by a transmittal letter and are considered delivered when the OCRWM Chief Engineer signs the transmittal letter acknowledging receipt. For purposes of this PBI, the documents are accepted upon the date of signature by the Contracting Officers Representative following completion of the LP-7.21Q OCRWM review process.

Acceptance Criteria: DOE will accept, accept with conditions, or reject Contractor documents within 30 calendar days of delivery to DOE. In the event the deliverable date is not met, the total available fee assigned to this PBI milestone will be reduced by 1% per calendar day until delivery of the document to DOE. If the deliverable is rejected, the same 1% per calendar day reduction applies until an acceptable deliverable is provided. The 1% per day reduction is calculated from the original due date.

PROPOSED PERFORMANCE BASED INCENTIVE (PBI) NO. 4

Perform of ITS facility overturning calculations using alternative methodology.

Period of Performance: April 1, 2008, through March 31, 2009

Total PBI 4 Fee Available: 5%

- Milestone (a): 2%
- Milestone (b): 1%
- Milestone (c): 1%
- Milestone (d): 1%

Contractor Requirements:

Evaluate the stability of the four process Surface Nuclear Facilities (IHF, CRCF, WHF, and RF) against overturning by the methodology provided in ASCE/SEI 43-05, Sections 7.2 and A.2, or by the energy approach. Using the energy approach, the factor of safety against overturning is calculated as the ratio of potential energy required to cause overturning about one edge of the structure to the maximum kinetic energy in the structure due to the earthquake. Calculations shall be developed in accordance with the appropriate BSC procedures and submitted to DOE for acceptance review under DOE procedure LP-7.21Q-OCRWM.

Performance Objectives:

The Contractor shall deliver an acceptable evaluation that verifies the stability against overturning by the methodology provided in ASCE/SEI 43-05, Sections 7.2 and A.2, or by the energy approach for each of the following facilities on or before the dates listed:

- Milestone (a): Initial Handling Facility (IHF) – April 30, 2008
- Milestone (b): Canister Receipt and Closure Facility (CRCF) – September 30, 2008
- Milestone (c): Wet Handling Facility (WHF) – September 30, 2008
- Milestone (d): Receipt Facility (RF) – September 30, 2008

Incentive Fee Metrics:

Milestones (a) thru (d): Incentive fee is earned at the conclusion of the 6-month evaluation period ending September 30, 2008.

Completion Criteria:

The Contractor shall deliver an acceptable evaluation that verifies the stability against overturning by the methodology provided in ASCE/SEI 43-05, Sections 7.2 and A.2, or by the energy approach for each of the facilities as required above. The documents are transmitted by a transmittal letter and are considered delivered when the OCRWM Chief Engineer signs the transmittal letter

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acknowledging receipt. For purposes of this PBI, the documents are accepted upon the date of signature by the Contracting Officer's Representative following completion of the LP-7.21Q-OCRWM review process.

Acceptance Criteria: DOE will accept, accept with conditions, or reject Contractor documents within 30 calendar days of delivery to DOE. In the event the deliverable date is not met, the total available fee assigned to the PBI milestone will be reduced by 1% per calendar day until delivery of the document to DOE. If the deliverable is rejected, the same 1% per calendar day reduction applies until an acceptable deliverable is provided. The 1% per day reduction is calculated from the original due date.

PERFORMANCE BASED INCENTIVE (PBI) NO. 5

Develop design and procurement performance specifications for mechanical handling equipment.

Period of Performance: April 1, 2008, through March 31, 2009

Total PBI 5 Fee Available: 10%

- Milestone (a): 4%
- Milestone (b): 2%
- Milestone (c): 2%
- Milestone (d): 2%

Contractor Requirements:

The specifications for designs of mechanical handling equipment shall be developed sufficient for defense of the LA in accordance with the appropriate BSC procedures and submitted to DOE for acceptance review under DOE procedure LP-7.21Q-OCRWM.

Performance Objectives:

- Milestone (a): Develop a Transport and Emplacement Vehicle (TEV) procurement performance specification. The performance specification will be a document that captures the equipment functions and requirements, lines out the basic vendor performance requirements, applicable codes and standards for the vehicle, as well as the electrification and communication systems. Deliver to DOE no later than December 31, 2008.
- Milestone (b): The Contractor shall deliver performance specifications for the Waste Package Transfer Trolley (WPTT). Deliver to DOE no later than November 30, 2008.
- Milestone (c): The Contractor shall deliver performance specifications for the Canister Transfer Machine (CTM). Deliver to DOE no later than December 31, 2008.
- Milestone (d): The Contractor shall deliver performance specifications for the Cask Transfer Trolley (CTT). Deliver to DOE no later than November 30, 2008.

Incentive Fee Metrics:

Milestones (a) thru (d): Incentive fee is earned at the conclusion of the 6-month evaluation period ending March 31, 2009.

Completion Criteria

The Contractor shall deliver the design and procurement performance specifications for Milestones

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(a) through (d) as discussed above. The documents are transmitted by a transmittal letter and are considered delivered when the OCRWM Chief Engineer signs the transmittal letter acknowledging receipt. For purposes of this PBI, the documents are accepted upon the date of signature by the Contracting Officer's Representative following completion of the LP-7.21Q-OCRWM review process.

Acceptance Criteria: DOE will accept, accept with conditions, or reject Contractor documents within 30 calendar days of delivery to DOE. In the event the deliverable date is not met, the total available fee assigned to the PBI milestone will be reduced by 1% per calendar day until delivery of the document to DOE. If the deliverable is rejected, the same 1% per calendar day reduction applies until an acceptable deliverable is provided. The 1% per day reduction is calculated from the original due date.

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SPECIAL EMPHASIS AREA (SEA) 1: LA Defense

Period of Performance: April 1, 2008, through March 31, 2009

Total Fee Available: 10% (Apr - Sep 08)
25% (Oct - Mar 09)

Performance Objective 1: Assist DOE in preparation for and conduct of NRC post-submittal briefings. Assist in the preparation of materials for NRC post-submittal briefings. Assist in preparation of responses to questions, including Requests for Additional Information (RAIs).

Due Date: As required to support post-submittal briefings during April 1, 2008, to March 31, 2009

Completion Criteria: Materials will be accurate, complete, comprehensive, consistent and timely in accordance with the License Application Defense Plan (LADP).

Acceptance Criteria: DOE RAO Director or his designee will accept or reject proposed briefing materials and proposed responses to RAIs within 5 working days of delivery by BSC.

Performance Objective 2: Support DOE and Atomic Safety and Licensing Board(s) (ASLB) related activities. Assist DOE in the preparation of timely responses to interrogatories, draft contentions, contentions or other license defense information.

Due Date: As required to support ASLB activities during April 1, 2008, to March 31, 2009

Completion Criteria: Materials will be accurate, complete, comprehensive, consistent and timely in accordance with the LADP.

Acceptance Criteria: The delivered materials and responses will be approved or disapproved by the DOE RAO Director or his designee within 10 days.

Performance Objective 3: Maintain the Comprehensive Process and Human Resource Pool, established under PBI 1, to support the docketing, licensing, and related activities for DOE's application to the NRC.

Due Date: April 1, 2008, to March 31, 2009

Completion Criteria: The LADP established under PBI 1 shall be maintained current through appropriate revisions.

Contractor will perform activities described in the LADP and supporting procedures for which it is responsible, including integration function. Contractor will perform all activities in a timely

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fashion so as to cause no significant delay to the licensing activities. The Human Resource Pool shall be kept fully staffed with qualified personnel. Training specific to license defense activities for BSC employees shall be kept current. Any replacements for the lead personnel will be approved by the Director, RAO. Any replacements in the remaining complement of qualified personnel will be selected by BSC, but documentation of personnel qualifications will be provided to DOE.

Acceptance Criteria: Revisions to the LADP will be provided to DOE in accordance with the procedures for maintenance of the Plan, and will be approved or disapproved by the DOE RAO Director or his designee within 30 days. Proposed replacements for lead personnel shall be provided to DOE prior to selection and will be approved or disapproved by DOE within 5 working days. The Contractor will be given sufficient time to address any disapproval and to provide an acceptable alternative.

Performance Objective 4: Maintain the LSO functions in Rockville, MD, with support staff and infrastructure sufficient to support activities during the fee period.

Due Date: April 1, 2008, to March 31, 2009

Completion Criteria: Maintain lease current for LSO office space. Identify and staff office with qualified personnel to perform the functions identified in the LADP. Establish provisions for “surge support”, e.g., hot bunks, computer capabilities, conference rooms, when changing workload dictates. Maintain service contracts and other maintenance arrangements. The Contractor will document status of LSO functions in the Monthly Report.

Acceptance Criteria: DOE will accept, accept with conditions, or reject within 30 calendar days of submittal by BSC of the September 2008 and March 2009 Monthly Reports.

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SPECIAL EMPHASIS AREA 2: Programmatic

Period of Performance: April 1, 2008, through March 31, 2009

Total Fee Available: 5% (Apr – Sep 08)
10% (Oct – Mar 09)

Performance Objective 1: Timely and effective management of a comprehensive Continuous Improvement Program (CIP) in support of the overall DOE program. Implement and manage a proactive Corrective Action Program, Lesson's Learned Program, Self-Assessment Program, and Performance Indicators. Manage the Personal Property Management program and report performance in accordance with the DOE Balanced Scorecard evaluation process. Assist DOE in achieving the goals and objectives contained in Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and the goals of DOE's Transformational Energy Action Team (TEAM) initiative.

Due Date: As required to support CIP activities during April 1, 2008, to March 31, 2009

Completion Criteria: Effectively identify, communicate and resolve issues adverse to quality in a timely manner. Proactively reduce error-causing aspects of procedures, processes and human performance. Report property management program performance in accordance with the DOE Balanced Scorecard, and improve performance on a continuous basis. Manage energy usage to minimize impacts on the environment and achieving DOE goals for conservation.

Performance Objective 2: As event-based project activities drive permit needs, develop, revise as necessary, and maintain a consolidated list of standard environmental permit activities relating to repository construction, Nevada Rail, and other environmental regulations (other than 10 CFR Part 63 related requirements) for local, state, federal and other regulators.

Due Date: As required to support permit activities during April 1, 2008, to March 31, 2009

Completion Criteria: The permits currently identified as potentially needed for repository construction, excluding Air Quality Class 1 Permit and Nevada Water Permit Appropriation, will be entered in Repository Permits section of the Primavera Scheduling system. For new permits, activities entered will be accurate and specific to each permit and will include but not be limited to such activities as: necessary and appropriate design preparation and receipt of design input; permit application preparation; DOE permit application review; permit application submittal; agency review; receipt of permit; incorporation of permit conditions; and completion of ready to start activities. The level of detail should be appropriate to the immediacy of the permits. For permits currently held, activities entered will also be accurate and specific to each permit and will include such items as required maintenance reporting and other activities required to ensure that the permits remain intact. Permit titles in the Primavera schedule are to be consistent with permit titles

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used in other Repository environmental permit planning documents. DOE will review this deliverable as draft by May 15, 2008, and final by August 15, 2008.

Performance Objective 3: Demonstrate through continuous evaluations and approved cost-saving proposals, strong support for cost control practices, including self-identified cost savings, process efficiencies, and value-engineering proposals.

Due Date: As required to support cost control activities during April 1, 2008, to March 31, 2009

Completion Criteria: For all scope and schedule changes, and for new task plans, perform appropriate cost analysis to ensure that the “best value” alternative for performing the work is selected and implemented.

Performance Objective 4: Work cooperatively with the successor contractor to transition all work activities, resources (equipment, property, and personnel), and appropriate procedures and processes to ensure operations, design and LA defense activities continue with minimal disruptions of the overall program activities.

Due Date: As required to support transition activities primarily from October 2008, through March 2009.

Completion Criteria: Proactively manage the BSC transition and turnover activities ensuring that it is completed on schedule with maximum transparency and with minimal disruptions or disagreements. Inventories of resources are complete and turnover occurs with minimal discrepancies. Design and LA defense activities proceed continuously throughout the transition period with only minor disconnects in approach or performance, and the successor contractor is made aware of the strategic direction and any outstanding major issues prior to the end of the transition period.

Acceptance Criteria: Determination of actual fee earned shall be a single value based performance evaluation of all four Performance Objectives collectively, as determined by the Performance Monitor(s).

ATTACHMENT 2

FORMAT

PERFORMANCE MONITOR EVALUATION REPORT

I. EVALUATION PERIOD: _____

II. DOE PERFORMANCE MONITOR:

Signature: _____ Date: _____

III. PERFORMANCE BASED INCENTIVIES (PBI) EVALUATIONS:

PBI # _____ Recommended Fee Earned _____

Discussion:

IV. EVALUATION OF AWARD FEE SPECIAL EMPHASIS AREAS:

SEA # _____ Adjective Rating _____

Discussion:

Discussion summaries should describe the method used to evaluate timeliness, quality and completion of performance objectives/measures; clarifying remarks regarding the timeliness and sufficiency of the products/activities against defined performance objectives/measures; identification of significant deviations; rationale for recommended fee payment/rating (if necessary, provide computations); and mitigating factors, if any, that were considered in determining the amount of fee.

Areas to consider:

1. Contractor monthly performance indicator results including positive or negative trends.
2. Management reviews and reports including the new monthly reviews.
3. Contractor's self-assessment report.
4. DOE independent and program assessments.
5. Issues and corrective action of issues

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ATTACHMENT 3

FEE DETERMINATION OFFICIAL

Director, Office of Project Management and Procurement

**PERFORMANCE EVALUATION BOARD
MEMBERSHIP**

Procurement Director - Chair

Principal Deputy Director - Member

Director, Office of Quality Assurance - Member

Director, Office of the Chief Engineer - Member

Director, Regulatory Authority Office - Member

Director, Construction Management and Site Operations Office - Member

Director, Waste Management Office - Member

Director, Office of Logistics Management - Member

Director, Disposal Operations Office - Member

Director, Office of Government Services - Member

Director, Office of the Chief Scientist - Member

Director, Office of External Affairs - Member

Contracting Officer - Member

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ATTACHMENT 4

OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT PERFORMANCE EVALUATION AND MEASUREMENT PLAN CHANGE REQUEST		QA: Page of
1. Initiator of Change Request:		2. Office Symbol:
3. Phone No:		
4. Current Version of PEMP:	a. Revision No:	b. Change No:
5. Date of Request:		
6. Reason for Request:		
7. Authority for Change:		
a. Technical Direction Letter <input type="checkbox"/>		
b. Contracting Officer Letter <input type="checkbox"/>		
c. Baseline Change Proposal <input type="checkbox"/>		
d. Other <input type="checkbox"/>		
e. Explain reason for change here, if necessary: (required for Other)		
8. Section No. in PEMP of Change:		
9. Exact Wording: (rewrite the section with changes identified)		
10. Request Disposition:		
a. Accepted, Change Implemented <input type="checkbox"/>		
b. Accepted with Changes <input type="checkbox"/>		
c. Rejected <input type="checkbox"/>		
d. Other <input type="checkbox"/>		
11. Comments: (including changes made, rejection reason, or other)		
12. Approved By:		13. Effective Date:
14. New PEMP Rev No/Change No.:		
a. Rev No:		b. Change No.:

1137 (Rev. 02/28/2005)